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MODERN

STATE TRIALS.

REVISED AND ILLUSTRATED

WITH ESSAYS AND NOTES.

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BY

WILLIAM C. TOWNSEND, ESQ. M.A. Q.C.

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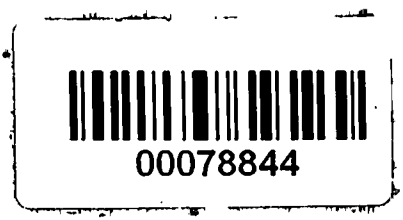

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CONTENTS

OF

THE SECOND VOLUME.

PAGE

The Trial of Lord Cochrane and seven others for Conspiracy - 10
Introductory Essay - - - - - - - 1
Remarks - - - - - - - - 103
Notes - - - - - - - - 108

The Trial of the Wakefields for Conspiracy and Abduction of Miss Turner - - - - - - - 119
Introductory Essay - - - - - - 112
Notes - - - - - - - - 154

The Trial of Hunter and four others for Conspiracy and Murder - 162
Introductory Essay - - - - - - 156
Notes - - - - - - - - 228

The Trial of John Ambrose Williams for a Libel on the Durham Clergy - - - - - - - - 237
Introductory Essay - - - - - - 231

The Trial of Charles Pinney, Esquire, Mayor of Bristol, for Neglect of Duty - - - - - - - - 283
Introductory Essay - - - - - - 272
Notes - - - - - - - - 353

The Trial of Mr. Moxon for Blasphemy - - - - 363
Introductory Essay - - - - - - 356
Notes - - - - - - - - 389

The Trial of Daniel O'Connell, Esq., M. P., and eight others, for Conspiracy - - - - - - - - 404
Introductory Essay - - - - - - 392

STATE TRIALS.

THE TRIAL

OF

LORD COCHRANE AND SEVEN OTHERS

FOR A CONSPIRACY,

IN THE COURT OF KING'S BENCH, GUILDHALL,

BEFORE LORD ELLENBOROUGH,

On Wednesday and Thursday, 8th and 9th June, 1814.

Counsel for the Prosecution: Mr. *Gurney*, Mr. *Bolland*, and Mr. *Adolphus*.

Counsel for Lord *Cochrane*, the Hon. *Cochrane Johnstone*, and R. G. *Butt*: Serjeant *Best*, Mr. *Scarlett*, Mr. *Topping*, and Mr. *Brougham*.

Counsel for C. R. *De Berenger*: Mr. *Park* and Mr. C. *Richardson*.

For *Sandom*, *Holloway*, and *Lyte*: Serjeant *Pell*, Mr. C. F. *Williams*, Mr. *Denman*.

Counsel for *M'Rae*: Mr. *Alley*.

INTRODUCTION.

'RARE as a black swan'—a matter of perplexity, wonder, and unbelief—is the circumstance of an erroneous conviction. That a prisoner should be found guilty innocently, appears to be a fact to the existence of which judges, barristers,

jurors, all who have experience in courts of justice, listen with dislike and incredulity. Yet, in the fallibility of human reasoning and evidence, such verdicts must occasionally be given. We may well rejoice that they happen so seldom; but the examples of the gipsey, prosecuted by Elizabeth Canning, of Fenning, of the sailor mentioned by Romilly*, who was executed on his own confession for a crime that he could not have committed, and Holden and the two Ashcoft's, and of four innocent convicts whose lives were saved by the humane exertions of Sheriff Wilde†, prove that, even in cases of life and death, the guiltless may be, and have been, condemned. That Lord Cochrane furnishes the instance of another victim to false impressions appears now to be generally conceded, and his restoration to that rank in the navy which he had won by so many gallant achievements was but the tardy national acknowledgment of the injustice that had been done him. Never was there given a verdict upon the propriety of which there existed so many discordant opinions and conflicting judgments of those most competent to decide. Sir Samuel Shepherd, as high-minded a gentleman as ever honoured the profession of the law, declared that, on such evidence, he would have felt bound, had he been on the jury, to convict the noble lord, had he been his own brother. Mr. Barham, on the contrary, declared his perfect conviction of Lord Cochrane's entire innocence. He had sought an interview with him to clear one or two doubtful points, and had contracted an intimacy in consequence which would continue as long as he lived. Mr. Wynn agreed with Serjeant Shepherd.

Party feelings and political prejudices may have tainted their judgments, even unconsciously to themselves, for the member for Westminster had been a rash accuser and a vehement partizan. There may still be found many who will contend for his guilt as strenuously as medical men argue for the innocence of Donellan. The charge, which excited intense interest at the time, was, that the eight defendants had conspired fraudulently to raise the price of the public funds, by

* Romilly's Memoirs, vol. ii. p. 182.

† Report of Criminal Law Commissioners.

causing persons, disguised as officers, to pretend that they had arrived at Dover and Northfleet with expresses from France on the morning of Monday, February 21st, 1814, announcing the overthrow of Buonaparte and the conclusion of the war.

In the following condensed report of this most interesting trial, we trust to satisfy the sceptical, and demonstrate to the conviction of the candid, that the verdict of guilty against Lord Cochrane was rash and inconsiderate; that the doubtful declaration of Not Proven, the cautious answer of the puzzled Scotch juror, would have been stronger than the facts justified. Yet, even if this conclusion be correct, the jury ought not to be visited with heavy blame, for seldom had a more untoward combination of circumstances occurred to bias their judgments. Of the guilt of two of the conspirators, De Berenger and Cochrane Johnstone, the uncle of Lord Cochrane, there could exist, after the conclusive evidence adduced, no reasonable doubt; yet the same counsel defended both uncle and nephew, and his topics on behalf of the one could not fail to be heard with incredulity, when he was constrained to attempt to explain away the strong facts which crushed the other. It was a sad mistake their being jointly defended by the same counsel. The cases should have been kept scrupulously apart; they could not sever in their challenges, but they ought to have severed in their defence. The answers of each should have been presented to the jury by a different voice; it should have been shown palpably, and on the view, that the portion of each was not one and indivisible, but entirely distinct and separate.

The arch artificer of the fraud, Mr. Cochrane Johnstone, had artfully contrived that the three cases, Lord Cochrane's, Mr. Butt's, and his own, should appear as one — '*tria juncta in uno*,' that in their nescience and ignorance his own contrivance might be confounded. He clung to his colleagues with the desperation of a drowning man, and, as a natural consequence, borne down by his weight, they perished together. Had either Topping, Scarlett, or Brougham, defended Lord Cochrane singly, and presented his case apart, there is every reason to believe, from the evidence, that there would have been a different result. The refusal of Lord Ellenborough to

permit an adjournment at midnight tended, also, severely to cripple and harass the counsel for the defendants. After fifteen hours in court, Serjeant Best could not be expected to master all the topics that presented themselves on behalf of his three several clients, or distinguish nicely the different shades of guilt; and he afterwards frankly told the querulous lord that he had not been able to do him full justice. The counsel was disabled from speaking, and the jurors from listening, by physical exhaustion and fatigue. The fact which pressed most strongly against Lord Cochrane was the dress which De Berenger wore at the time of the interview with him at his own house on the morning of the fraud, immediately on his effecting it. Lord Cochrane having sworn in his affidavit that he wore a green uniform, the proof being that he entered the house in red, Serjeant Best endeavoured to explain away the variance by the dangerous argument that his client had made a mistake, and, having been accustomed to see De Berenger in green, had confounded one colour with another. Lord Cochrane insisted that there was no mistake, and had given positive instructions that his servants should be called to prove it; but, with a culpable rashness, he neither attended the consultation nor the trial, nor even perused the brief in which the colour of the coat was described to be red; and the counsel in court, believing him to be mistaken, perhaps wilfully, adventured an ingenious but perilous interpretation of their own, which is supposed to have wrecked their client. There was a much better solution, had a night's interval been permitted, that De Berenger had more than an hour's leisure, being left with his portmanteau in the parlour by himself, to change his dress; or, if he had not availed himself of that opportunity, that his great coat, when buttoned, only showed the collar of the coat, and that the uniform was red with green facings, green being the only colour visible. Though he afterwards exchanged this coat for a black one, which Lord Cochrane lent him, there was no proof where he changed it.

The vehement reply of Mr. Gurney on the following day, in the full possession of his energies, eager and resolute to detect the clever imposture, and the stern summing up of

Lord Ellenborough, commenting with indignant eloquence on the false *alibi* of De Berenger, and his appearance before Lord Cochrane, "fully blazoned in the costume of his crime," scarcely gave a chance of acquittal. The charge of the Chief Justice, breathing throughout a lofty tone of scorn, and irony, and contempt, never suggesting a doubt, and barely disguising his own emphatic conviction of the guilt of each, was peculiarly calculated to impress the minds of a Special Jury of London merchants and bankers, who must have sympathised warmly in the alarm and anger of the Committee of the Stock Exchange at so successful a fraud upon the monied interest. That they should have deliberated for two hours and a half after such a charge, shows how much doubt must have remained in this one case, possibly in the case of Mr. Butt also. As to De Berenger and Cochrane Johnstone, there was no occasion to quit the box, for of their guilt there could by possibility exist only one opinion.

The sentence that was passed on Lord Cochrane would justify the suspicion that justice had been measured out oppressively, if not vindictively. He was sentenced to pay a fine to the king of 1,000*l.*, to be imprisoned in the King's Bench prison for twelve calendar months, and "to be set in and upon the pillory, opposite the Royal Exchange in the city of London, for one hour between the hours of twelve at noon and two in the afternoon." From this last infamous punishment, usually reserved for perjurers, seditious libellers, and miscreants convicted of nameless crimes, Lord Cochrane's long career of glory ought assuredly to have exempted him. The hero of the Basque Roads had stood too erect to stoop to the pillory. The laurel wreath had too lately been twined round his brows to let them be exposed on a scaffold. One universal hiss at the harsh and unprecedented sentence in a case of conspiracy, a general cry of indignation and horror, ran through Westminster at their gallant representative being thus exposed to infamy. But the spirit of Lord Ellenborough was too firm and undaunted to quail before the voice of popular clamour, and a day was actually fixed for the exposure, when, on the motion of Lord Ebrington in the House of Commons to remit this part of the sentence, Lord

Castlereagh announced that the ministers had advised the Prince Regent to remit it as to all three, "the crime being too rare and too alien to the spirit of Englishmen to appear to them imperatively to require such an exposure."

But this tardy announcement of clemency did not avail to save the instrument of punishment itself, now that public attention was called to it, from being abolished. For one hundred years since De Foe had written his bitter Ode to the Pillory, this capricious engine of mob tyranny had been converted, at their caprice or fury, into a platform of triumph or a scaffold of death.

Dr. Shebbeare had stood there to receive the plaudits of the fickle mob, attended by a footman in livery, guarding off with an umbrella the rays of the sun, or, perchance, some unlucky missile. Williams had dropped down dead the moment he was set free, the mutilated victim of their vengeance. Just as their humour dictated, it was used as an instrument of mental torture only, or a lingering, vindictive, cruel execution. They stoned to death a fellow-being whom even the sanguinary laws of that period could not condemn to die. The populace were made his judge and his executioner. It went down before the national indignation, and this relic of the punishments of a barbarous age is abolished for ever.*

This ignominious torture formed the only part of the sentence that was remitted. The Bank of England preserves among its archives the identical 1,000*l.* note on which Lord Cochrane has indorsed his indignant protest against the cruel iniquity of his sentence. He endured his imprisonment in the King's Bench prison from the 21st of June to the 6th of March following, when he quitted the walls, thinking, to use his own phrase, that he had stayed long enough in prison to evince that he could endure restraint as a pain, but not as a penalty, with the sole object of assuming his seat in Parliament, and of reminding that assembly that their sentence of expulsion had been reversed by the people, and of demanding a strict investigation into the conduct of his judge. He appeared accordingly in St. Stephen's Chapel on March 21st, and was immediately seized by the assistants of the Marshal, it being noon, and no other member there, and recon-

* By statute 56 George 3. c. 128.

veyed to prison. For this escape he was subsequently tried at the Surrey Assizes, August 1816, and defended himself, "conceiving that the injustice done to him on a former occasion was in part attributable to the conduct of his counsel." He then proved the hardships he had suffered on his recapture, being placed for three weeks in the strong room, which had no fireplace, and where his health had suffered by the cold damp and offensive smells. A committee of the House of Commons declared their opinion that it was not a fit place of confinement. The jury found Lord Cochrane guilty, as there could be no doubt on the facts, but accompanied their verdict with the declaration—"We take the liberty of saying that the punishment which he has already received is quite adequate to the offence of which he was guilty."*

These inflictions, however, formed by no means the heaviest part of his punishment, the necessary though collateral effects of his conviction and sentence. He was expelled the House, but afterwards unanimously re-elected for Westminster, and, such was the enthusiasm in his favour, without a contest. He was deprived of the command of the Tonnant, on whose outfit he had expended above 1,000*l.*, and, what he must have felt more acutely than any pecuniary loss, prevented earning fresh laurels on the deep in his country's service. His name was struck out of the navy list—a name that will be printed in capital letters in England's history, by the side of Nelson's, and Collingwood's, and Exmouth's. As a crowning humiliation, he was stripped of his title as Knight of the Bath; his banner was taken down at midnight from Henry VII.'s Chapel. In his own bitter language, they played a midnight game of football with his decorations; his spurs were to be hacked off the heels of the person who represented him with a butcher's cleaver.

These indignities wrongfully inflicted, the sequence, in his mind, of an unjust verdict festered in his brain. He displayed an excusable soreness of feeling, a morbid irritability, which might well arise from the perverted sensibilities of a man of honour, and struck at all, as if every man's hand was uplifted against him. He accused his attornies and counsel of

* Report of the Trial at Guildford.

having betrayed him. In the agony of his heart he denounced his uncle's recommendation that he should leave all to him, and not interfere in a trial in which he was only nominally interested. He censured his law agent for not insisting that his witnesses to the dress should have been called. He challenged De Berenger to speak out if he had any secret that might implicate him. He bade defiance to all that were convicted as his co-conspirators to reveal their worst. He inveighed against the jury, citing the lines that had reference to the happy times of Alfred.

> "No spies were paid, no special juries known,
> Blest age, but ah! how different from our own."

But the force of language sunk beneath him; the broad honest Saxon was insufficient to embody all the epithets of abuse, and virulent invectives, which, from his place in the House of Commons, he launched at the head of the tyrannical Chief Justice. He denounced Mr. Gurney's conduct as ferocious.

The report of his defence in the House of Commons is filled with asterisks wherever it alludes to Lord Ellenborough; and some questions which he foolishly hazarded show how completely his mind and temper had become cankered and corroded with unfounded suspicions.* "Did Lord Ellenborough visit Lord Melville at the Admiralty to request that I might be suspended from my command, and detained for the purpose of being prosecuted? and did he advise the counsel for the prosecution to shape the indictment after a particular and well-known case?" The contradictions given to these wild delusions by the Attorney-General and Mr. Croker might be deemed utterly superfluous, for no gentleman of intelligence could believe in the possibility of the Chief Justice of England stooping to such self-abasement; but the existence of these diseased imaginings may well coexist with a deep-rooted sense of injury, a burning consciousness of wrong. The victim of Cochrane Johnstone's conspiracy, he knew that justice had not been done to his motives, and he could not keep his judgment cool enough to do justice to another. He had committed no crime, and who

* Parliamentary Debates, vol. xxviii. p. 568.

could have adjudged him criminal, to his jaundiced vision, but a corrupt judge and a packed jury! "I can assure the judge," said the exasperated member, "and I now solemnly assure this house, my constituents, and my country, that I would rather stand in my own name in the pillory every day of my life, under such a sentence, than I would sit upon the bench in his name, and with his real character for one single hour." These, it is true, were mere ravings; but the voice of anguish maddened against injustice was intoned by conscious rectitude. He besought the House for a full investigation, and that if guilty he might be deserted and abandoned by the world. "I call upon my Maker," was his concluding appeal; "I call upon Almighty God, to bear witness that I am innocent. He knows my heart, He knows all its secrets, and He knows that I am innocent and ignorant of the whole transaction." These solemn protestations of innocence, and even his angry denunciations, made a great impression on the House, and an adjournment to wait for the printing the report of the trial was negatived by 142 to 74, the number of the minority proving the effect of his address. His expulsion was then voted by 140 to 44. The expulsion of Mr. Cochrane Johnstone was afterwards voted as a matter of course, for he had fled the country. After his re-election and release from prison, Lord Cochrane, in 1816, presented articles of impeachment against Lord Ellenborough for gross partiality and oppression in the conduct of his trial. The good sense and right feeling of the House unanimously rejected the accusation: the tellers in favour of it were the two members for Westminster, Lord Cochrane and Sir Francis Burdett, who had too much gallantry to desert his colleague; but not a single member went out in the division, and, with a like unanimity, the charges were ordered to be expunged from the journals.

The stern integrity and iron virtue of the Chief Justice demanded this public vindication. He scorned the sordid fraud, and was deeply impressed with the importance of making it known to the whole country in what light the law contemplated the magnitude of the crime, what was its true character, and what the nature of the punishment attached to it. In defiance of all the speeches in the House of Commons, and addresses to the electors of Westminster,

and charges of impeachment, Lord Ellenborough knew his own dignity too well to condescend to utter one syllable of explanation or apology. Lord Cochrane protested that he would renew his motion every session; and this perpetual brooding over his wrongs, this determination to compel redress for repeated injuries, argued still the pertinacity of innocence. The time of his disgrace must have added additional bitterness to his pangs. There remained but a few months of perilous achievement in which to attain glory before the final close of the war. The thanks of the House were being voted to brother officers, just before his expulsion. He was thirty-nine; and, in the month in which the grand jury found a true bill against him for conspiracy, had become a father. After an ineffectual struggle to remove the convictions of some, and cold suspicions of others, who persisted in believing him guilty, Lord Cochrane quitted England, and, in a foreign service and on distant shores, performed many gallant exploits during the South American war. At the interval of thirty-three years (how long an interval in the life of man!), at the close of life, after succeeding to the title of Earl of Dundonald, he was, by a most laudable act of grace, restored to his rank in the navy, and appointed Vice-Admiral of the Blue. There was no opportunity for reversing the verdict of the jury; yet his stall among the Knights of the Bath (he was truly a knight *sans peur*, but, in the face of the fatal record, not *sans reproche*) no longer remains empty. On the 22d of May, 1847, Vice-Admiral the Earl of Dundonald was gazetted Knight Grand Cross of the Bath.

Mr. Gurney made a very powerful speech in opening the prosecution, a criminatory address, that must have told with fatal force on the feelings and prejudices of the jury. He brought together the mass of facts with singular clearness and dramatic effect, enforcing every suspicious circumstance, arguing upon motives, inferring guilty reasons, and reading a bitter commentary on the affidavit of Lord Cochrane. The speech of Mr. Garrow, on the prosecution of Patch for murder, could not have been more fatal to the accused, or have afforded less opportunity for escape.

From his long experience at the Old Bailey, Mr. Gurney knew well how to track through all its windings the course of fraud and falsehood, and could unearth the most crafty and underhand plotters. The character of his mind, disposed to severity, led him to infer wicked connivance, and to contemplate the dark side of human nature. This ingenious scheme of knavery, concocted by a clever artificer, Mr. Cochrane Johnstone, gave all the animation of the chase to the prosecuting counsel, who keenly pursued, *naso suspendit adunco*, the labyrinth of fraud, and, thoroughly convinced of the guilt of all the parties, felt his own reputation involved in exposing it.

"If this had been a conspiracy to circulate false rumours, merely to abuse public credulity, it would not have been a trivial offence; but if the object of the conspiracy be not merely to abuse public credulity, but to raise the funds, in order that the conspirators may sell out of those funds for their own advantage, and, consequently, to the injury of others, in that case the offence assumes its most malignant character — it is cold-blooded fraud, and nothing else. It is then susceptible of but one possible aggravation, and that is, if the conspirators shall have endeavoured to poison the sources of official intelligence, and to have made the officers of government the tools and instruments of effectuating their fraud — Gentlemen, this offence, thus aggravated, I charge upon the several defendants upon this record, and I undertake to prove every one of them to be guilty.

"Gentlemen, when I undertake to prove them to be guilty, you will not expect that I shall give you proof by *direct evidence*, because, in the nature of things, *direct evidence* is absolutely impossible — they who conspire do not admit into the chamber in which they form their plan any persons but those who participate in it; and, therefore, except where they are betrayed by accomplices, in no such case can positive and direct evidence be given. If there are any who imagine that positive and direct evidence is absolutely necessary to conviction, they are much mistaken; it is a mistake, I believe, very common with those who commit offences: they fancy that they are secure because they are not seen at the moment; but you may prove their guilt as conclusively

(perhaps even more satisfactorily) by *circumstantial evidence*, as by any *direct evidence* that can possibly be given.

"If direct and positive evidence were requisite to convict persons of crimes, what security should we have for our lives against the *murderer by poison?*—no man sees him mix the deadly draught, avowing his purpose. No; he mixes it in secret, and administers it to his unconscious victim as the draught of health: but yet he may be reached by *circumstances*—he may be proved to have bought, or to have made the poison; to have rinsed the bottle at a suspicious moment; to have given false and contradictory accounts; and to have a deep interest in the attainment of the object. What security should we have for our habitations against the *midnight burglar*, who breaks into your house and steals your property, without disturbing your rest or that of your family, but whom you reach by proving him, shortly afterwards, in the possession of your plate? What security should we have against the *incendiary*, who is never seen in the act by any human eye, but whose guilt, by a combination of circumstances over which he may have had no control, or part of which he may have contrived for his own security, is as clearly established as if deposed to by the testimony of eye-witnesses.

"Gentlemen, by the same sort of evidence by which in these, and various other cases, the lives of individuals are affected, I undertake to bring home this case to the defendants upon this record. I undertake to show that such a conspiracy did exist as this indictment charges; and I undertake to prove every one of these defendants acting in furtherance and execution of the conspiracy, so as to leave no more doubt upon your minds, when you have heard the evidence, that they were all parties to this conspiracy, than if you had witnesses before you who were present with them in consultation, and heard them assign to each man the part which he was to act. * * * * *

"Gentlemen, in the security in which we now repose, in the triumph in which we are now indulging, it is difficult to carry back our minds to the state of agonizing suspense in which we were at the critical time at which this conspiracy took place. At that time the empire of him for whom

Europe itself appeared too small, was not confined within the narrow limits of the Isle of Elba; he had been driven back, it is true, from the extremity of Europe into France.—France itself was invaded, and our illustrious allies had made considerable progress towards Paris, but they had been more than once repulsed, and one army had, by almost superhuman efforts, preserved itself from destruction; but the fortune of war was uncertain; in this age of miracles, no man could tell what would be the final event; and every one was waiting in breathless expectation for the destruction of him (or at least of his power) who had been so long the destroyer of his species. Gentlemen, at that most critical moment, when the funds were so liable to be affected by every event of the war, when they were liable to be affected still more by the negotiations at Chatillon, which were then pending—at that moment this conspiracy with respect to the funds took place; and you will bear this in mind, Gentlemen, that if the false news were believed but for a single hour, the mischief to the public would be done—the object of the conspirators would be accomplished."

Mr. Gurney then traced the clever drama played by these Jeremy Diddlers to its happy *denouement*, and the discovery of the pseudo-messenger by the Committee of the Stock Exchange, in his uniform and star, at the house of Lord Cochrane.

"Having proceeded thus far, the next thing for the Committee to discover was whether Lord Cochrane was a person who could have any possible interest in the success of this fraud. They pursued their inquiries upon that subject, and they discovered, to their utter astonishment, that this nobleman—this officer highly distinguished in the navy, then lately appointed to an important command, and, one should have supposed, his whole soul ingrossed in preparation for the active and important service on which he was going—this representative in parliament for the city of Westminster, bound by the most sacred of all duties not to involve himself in any situation by which his honest judgment could be warped, and his parliamentary conduct influenced—they found Lord Cochrane to have been a deep speculator in omnium; that he had been so for one week only; that on

that Monday morning he had a large balance on hand, and that on that Monday morning he had sold out the whole of that balance, and sold it at a profit.

"When the Committee had learned thus much, they could not but feel that it was impossible that it could be an accidental coincidence, that this impostor, Du Bourg, should have alighted at the house of a person thus deeply interested in the success of the imposition which he had practised. But their enquiries and discoveries did not end there; they found that Lord Cochrane had not acted alone in these stock proceedings; that he was connected with two other persons, who were still more deep in them, the one his uncle, Mr. Cochrane Johnstone (also a member of parliament), and the other a Mr. Richard Gathorne Butt, formerly a clerk in the Navy Office. They discovered that these persons were engaged together in speculations of a magnitude perfectly astonishing. I have the statement in my hand; but I do not think it requisite, in my address to you, to go through all the particulars. Mr. Cochrane Johnstone and Mr. Butt, who had commenced their stock speculations on the 8th of February, a week earlier than Lord Cochrane, had dealt much more largely even than he had. Their purchases were the same, their sales the same; they seemed in these stock speculations to have but one soul. If one bought twenty thousand, the other bought twenty thousand; if one bought ninety-five thousand, the other bought ninety-five thousand; you will find the act of one the act of the other; and you will find these three persons, Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, having, on the Saturday preceding this Monday, a balance amounting in Consols and omnium to very nearly a million — reduced to Consols, you will find it amount to sixteen hundred thousand pounds; and on the morning of Monday, on the arrival of this news, they all three sold — they sold all that they had, every shilling of it; and, by a little accident in the hurry of this great business, they sold rather more; and so anxious was Mr. Butt on that Saturday to be possessed of as much stock as possible, that he endeavoured to persuade Mr. Richardson to purchase one hundred and fifty thousand, but Mr. Richardson trembled at

the idea of making so large a speculation, and refused to go beyond the fifty thousand.

"You have these persons, then, linked together in such manner as will render them perfectly inseparable in these various stock transactions; having dealt for some little time; having bought and having sold; having this tremendous balance, this world of Stock, under which they were, on the Saturday evening, bending and groaning, on the Monday morning they had disburthened themselves completely of this with a profit of a little more than ten thousand pounds. If the telegraph had worked, that ten thousand would have been nearer a hundred thousand — that the telegraph did not work, was not to be ascribed either to them or to their agent.

"Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, felt that it was requisite for them to give some explanation upon this subject. Mr. Butt was extremely indignant at suspicions being thrown out respecting him, he abused those who had libelled and slandered him, and threatened prosecution, a threat which he has not executed, nor ever will.

"But it was felt that Lord Cochrane must account for his visitor, and Lord Cochrane came forward with a declaration upon this subject, in a manner which, I confess, appears to me most degrading. If a person of his rank thought fit to give any declaration, I should have thought that the mode of giving it would have been under the sanction of his honour. Lord Cochrane thought otherwise, and he chose to give it under the half and half sanction of a *voluntary affidavit.* I call it so, Gentlemen, for this reason, that, although he who makes a voluntary affidavit attests his God to its truth, he renders himself amenable to no human tribunal for its falsehood, for no indictment for perjury can be maintained upon a voluntary affidavit. I wish that none of these voluntary affidavits were made; I wish that magistrates would not lend their respectable names to the use, or rather to the abuse, which is made of these affidavits; for whether they are employed to puff a quack medicine or a suspected character, they are, I believe, always used for the purpose of imposition.

"Gentlemen, this affidavit I have before me, and I will prove the publication of it upon Lord Cochrane: it is thus prefaced: —

"'Having obtained leave of absence to come to town, in consequence of scandalous paragraphs in the public papers, and in consequence of having learnt that handbills had been affixed in the streets, in which (I have since seen) it is asserted, that a person came to my house, No. 13, Green Street, on the 21st day of February, in open day, and in the dress in which he had committed a fraud, I feel it due to myself to make the following deposition, that the public may know the truth relative to the only person seen by me in military uniform at my house on that day.

COCHRANE.

"'Dated 13, Green Street, March 11th, 1814.'

"Now comes the affidavit: —

"'I, Sir Thomas Cochrane, commonly called Lord Cochrane, having been appointed by the Lords Commissioners of the Admiralty to active service (at the request, I believe, of Sir Alexander Cochrane) when I had no expectation of being called on, I obtained leave of absence to settle my private affairs previous to quitting this country, and chiefly with a view to lodge a specification to a patent, relative to a discovery for increasing the intensity of light. That in pursuance of my daily practice of superintending work that was executing for me, and knowing that my uncle, Mr. Cochrane Johnstone, went to the city every morning in a coach, I do swear, on the morning of the 21st of February (which day was impressed on my mind by circumstances which afterwards occurred), I breakfasted with him, at his residence in Cumberland Street, about half-past eight o'clock, and I was put down by him (and Mr. Butt was in the coach) on Snow Hill about ten o'clock; that I had been about three quarters of an hour at Mr. King's manufactory, at No. 1, Cock Lane, when I received a few lines on a small bit of paper, requesting me to come immediately to my house; the name affixed, from being written close to the bottom, I could not read. The servant told me it was from an army officer; and, concluding that he might be an officer from Spain, and that some accident had befallen my brother, I hastened back, and found Captain Berenger, who, in great seeming uneasiness, made many apologies for the freedom he had used, which nothing but the distressed state of his mind, arising from difficulties,

could have induced him to do; all his prospects, he said, had failed, and his last hope had vanished of obtaining an appointment in America; he was unpleasantly circumstanced on account of a sum which he could not pay, and if he could, that others would fall upon him, for full 8000*l.* He had no hope of benefiting his creditors in his present situation, or of assisting himself; that if I would take him with me, he would immediately go on board and exercise the Sharp Shooters (which plan Sir Alexander Cochrane I knew had approved of); that he had left his lodgings, and prepared himself in the best way his means allowed. He had brought the sword with him which had been his father's, and to that and to Sir Alexander he would trust for obtaining an honourable appointment. I felt very uneasy at the distress he was in, and knowing him to be a man of great talent and science, I told him I would do every thing in my power to relieve him, but as to his going immediately to the Tonnant with any comfort to himself it was quite impossible; my cabin was without furniture; I had not even a servant on board. He said he would willingly mess anywhere. I told him that the ward-room was already crowded, and besides, I could not, with propriety, take him, he being a foreigner, without leave from the Admiralty. He seemed greatly hurt at this, and recalled to my recollection certificates which he had formerly shown me from persons in official situations: Lord Yarmouth, General Jenkinson, and Mr. Reeves, I think, were amongst the number. I recommended him to use his endeavour to get them, or any other friends, to exert their influence, for I had none; adding, that, when the Tonnant went to Portsmouth, I should be happy to receive him, and I knew from Sir Alexander Cochrane that he would be pleased if he accomplished that object. Captain Berenger said, that, not anticipating any objection on my part from the conversation he had formerly had with me, he had come away with intention to go on board, and make himself useful in his military capacity. He could not go to Lord Yarmouth or to any other of his friends in this dress (alluding to that which he had on), or return to his lodgings, where it would excite suspicion (as he was at that time in the rules of the King's Bench); but that if I refused to let him join the ship now, he would do so at Portsmouth. Under present circumstances, however, he must use a great liberty, and request the favour of me to lend him a hat, to wear instead of his military cap. I gave him one which was in a back-room with some things that had not been packed up, and having tried it on, his uniform appeared under his great coat. I

therefore offered him a black coat that was laying on a chair, and which I did not intend to take with me. He put up his uniform in a towel, and shortly afterwards went away, in great apparent uneasiness of mind, and, having asked my leave, he took the coach I came in, and which I had forgotten to discharge, in the haste I was in. I do further depose, that the above conversation is the substance of all that passed with Captain Berenger, which, from the circumstances attending it, was strongly impressed upon my mind. That no other person in uniform was seen by me at my house on Monday, the 21st of February, though possibly other officers may have called (as many have done since my appointment); of this, however, I cannot speak of my own knowledge, having been almost constantly from home, arranging my private affairs. I have understood that many persons have called under the above circumstances, and have written notes in the parlour, and others have waited there, in expectation of seeing me, and then gone away; but I most positively swear, that I never saw any person at my house resembling the description and in the dress stated in the printed advertisement of the members of the Stock Exchange. I further aver, that I had no concern, directly or indirectly, in the late imposition, and that the above is all that I know relative to any person who came to my house in uniform on the 21st day of February, before alluded to. Captain Berenger wore a grey great coat, a green uniform, and a military cap. From the manner in which my character has been attempted to be defamed, it is indispensably necessary to state that my connection in any way with the funds arose from an impression that in the present favourable aspect of affairs, it was only necessary to hold stock in order to become a gainer, without prejudice to any body; that I did so openly, considering it in no degree improper, far less dishonourable;—that I had no secret information of any kind, and that, had my expectation of the success of affairs been disappointed, I should have been the only sufferer. Further, I do most solemnly swear, that the whole of the omnium on account which I possessed on the 21st day of February, 1814, amounted to 139,000*l.*, which I bought, by Mr. Fearn (I think) on the 12th ultimo, at a premium of 28¼; that I did not hold on that day any other sum on account, in any other stock, directly or indirectly, and that I had given orders when it was bought to dispose of it on a rise of one per cent., and it actually was sold on an average at 29¾ premium, though, on the day of the fraud, it might have been disposed of at 33¼. I further swear, that the above is the only

stock which I sold, of any kind, on the 21st day of February, except 2000*l.* in money, which I had occasion for, the profit of which was about 10*l.* Further I do solemnly depose, that I had no connection or dealing with any one, save the above-mentioned, and that I did not, at any time, directly or indirectly, by myself or by any other, take or procure any office or apartment for any broker or other person, for the transaction of stock affairs.'"

After indulging in caustic criticisms on other parts of the affidavit, Mr. Gurney particularly addressed himself to the loan of a coat and the change of dress.

"Gentlemen, I am sorry to find that my Lord Cochrane, filling the high situation that he does, sees nothing wrong in assisting a person within the rules of the King's Bench to abscond, for whose stay within those rules sureties have entered into a bond. Either Lord Cochrane's mind has confounded all right and wrong, or, what is more probable, he confesses this smaller delinquency to conceal the greater; for I say he would not have made this acknowledgment unless he had to conceal that he lent the dress for another purpose, for which purpose I say De Berenger resorted to him, and which purpose was answered by Lord Cochrane's assistance.

"Another part of this affidavit is very important: '*Captain Berenger wore a grey great coat, a green uniform, and a military cap.*' I will prove to you that the uniform was scarlet, that it was embroidered with gold, and that there was a star on the breast. I will prove that by many persons who saw it, and I will produce it to you to-day.

"A circumstance is resorted to by Lord Cochrane, and indeed by his associates, as a defence, which affords another proof of the infatuation of guilt. They have thought it a favourable circumstance for them that they sold out their stock early in the day at a small profit; in my mind it is one of the strongest circumstances against them. If they had believed the news, would they have sold out early, and at that small profit? why did they so sell out? but because they knew that belief in the news would last but a very short time, and that they must take advantage of it without delay.

"But, Gentlemen, it was felt that if the case rested there,

they had done very little indeed, because no man could be so infatuated as to suppose that this story of De Berenger and his Sharp-shooters would go down, unless they showed that De Berenger was not Du Bourg: for, if De Berenger was Du Bourg, it was very easily seen through, and therefore they set up for De Berenger, (who was not forthcoming to set it up for himself,) that best of all defences if true, which is sometimes resorted to in Courts of Criminal Judicature, and is commonly known by the name of an ALIBI.— It is, I say, the best of all defences if a man is innocent; but, if it turns out to be untrue, it is conclusive against those who resort to it. Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, published two affidavits of a man and woman of the name of Smith, who were the servants of De Berenger; the affidavits are of the same manufacture with the others. Affidavits are commonly in the third person, 'A.B. maketh oath and saith;' but I observe all these affidavits, as well Lord Cochrane's as the rest, begin 'I, A.B., do swear.' These affidavits I will read to you."

They were to the effect that their master slept at home on the night of Sunday, 20th February.

"At that time it was supposed Mr. De Berenger was safe out of the kingdom, and that no contradiction of these affidavits could ever take place; and that being supposed to be the case, these parties grew very bold, and there was a good deal of vapouring. Mr. Butt wanted his money. The Stock Exchange Committee came to this resolution, and it appears to me to be most honourable conduct; they resolved, not that the agreements of that day should be cancelled, but that an account should be taken of the profit made by those persons, who, in these extraordinary circumstances, had attracted suspicion to themselves; that that money should be paid into the hands of trustees, to await the result of the investigation. Mr. Butt was not satisfied with this arrangement, and he was clamorous for his money. They said, 'Wait a little, Mr. Butt, you shall have it presently, if you are entitled to it.' —'No,' he says, 'give me my money.'—'It is perfectly safe, Mr. Butt; for your own honour and character's sake wait a little.'—No reply, but 'the money—give me the money.'

——— 'Populus me sibilat; at mihi plaudo
Ipse domi, simul ac nummos contemplor in arcâ.'

"Gentlemen, that was the consolation to which Mr. Butt, looked, for the contempt to which he found his conduct had exposed him;—that consolation he will not have—he will have conviction and shame, but he will not get the money."

This telling speech of the prosecuting counsel next described the capture of De Berenger, the finding of the dress, and the identification of the wearer.

"Perhaps they may say,—for in the distress of their case I do not know what may not be said,—'Well, admitting that De Berenger was Du Bourg, are we to infer from his visit to Green Street that Lord Cochrane and he were thus criminally connected?—why, you must infer the contrary; it is a proof of innocence, for if they had been so connected, De Berenger would not have been such a fool as to pay his first visit to Lord Cochrane; he would have gone to any other house rather than to Lord Cochrane's.' Gentlemen, that argument will not assist my learned friends, for it is too much to ask credit for rational conduct in those who cannot act criminally without acting irrationally. They who contrive schemes of fraud cannot always provide for all possible events. No, Gentlemen, it is the order of Providence, in mercy to mankind, that wickedness should be defeated by its own folly. When the mind is in disorder the course is not straight and even, but irregular and wavering; it is detected by its obliquity; it is by the winding of the course that you discover you are in the path of the serpent. '*Quem Deus vult pêrdere prius dementat*,' is a maxim which comes down to us sanctioned by the experience of all ages; and no man who has not slept for the last two years can hesitate to set his seal to its truth. Gentlemen, it is as true of stock-jobbing conspirators as it is of those who have lately been entrusted with the destinies of empires. There is always something omitted: the omission here was this: in settling their plan of operations they had forgotten to provide where De Berenger should resort on his arrival in town, and on his way his heart failed him, as to going to his own lodgings; he dared not enter into his own lodgings in a dress, which dress would

lead to detection, and he therefore drove to Lord Cochrane's to get rid of his dress; and there he, by Lord Cochrane's assistance, did get rid of it; he procured a round hat and a black coat, and then went confidently and safely home to his lodgings, exempt from observation and suspicion.

"Gentlemen, my proof does not end there. If Mr. De Berenger was the hired agent of these persons, for the purpose of committing this fraud, what would you expect?—why, that, after they had used him, they would pay him and send him away.—I will prove to you, that they did so pay him, and that they did send him away. He was taken at Leith, and there were found in his possession certain books and papers and bank notes; these bank notes Mr. De Berenger has desired to have returned to him. The prosecutors thought that one bank note for one pound was as good as another bank note for one pound; and, in order that Mr. De Berenger might not complain of being cramped in pecuniary matters, they gave over to him notes of corresponding value. But that does not satisfy Mr. De Berenger; he wants the very identical notes taken from him; he has contracted an affection for them I suppose, on account of their having been his travelling companions. They were his solace in a long journey, and the support to which he looked in future in a foreign land. What harm can these notes do to Mr. De Berenger?—He is much too deeply implicated in this to make the presence or the absence of these notes of the least consequence to him. Who can be so blind as not to see, in the *pretended anxiety* of Mr. De Berenger for these notes, the *real anxiety* of his fellow conspirators; who, having made him their instrument in the fraud, wish to make him their instrument in the destruction of the evidence.

"Gentlemen, there have been differences of opinion on the subject of bank notes as a circulating medium, but there can be no difference of opinion as to their being most admirable detectors of fraud. I have these bank notes here, and you will find that the fears of these defendants are well founded, for they furnish conclusive proofs of their guilt. He appears to have had in his hands 540*l*. From whom do you think he had it? From his associates in this transaction,

Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt; we have traced the notes up to every one of them. I shall be enabled to show these persons actually paying him this very money; and when? Between the time of his transaction and his absconding. When I thus show De Berenger, who quitted London on Sunday the 27th of February, having accomplished this fraud on Monday the 21st, thus possessed of notes of this large value, in this great number, which were in the hands of these Defendants on Thursday the 24th, are you not just as certain that he received those notes from these defendants as the reward of his criminal service, as if you had been yourselves by, seen the notes paid, and heard the reason assigned for which they were paid.

"Mr. Butt has written to the newspapers to say, that, 'as the circumstances will be more fully discussed at a proper period, your astonishment will cease to exist when you see in what manner Captain De Berenger became possessed of the notes in question.' Then Mr. Butt knows in what manner De Berenger became possessed of these notes. I call upon Mr. Butt to tell you how they came into De Berenger's possession; my learned friends will hereafter have to inform you. And, Gentlemen, you will require something more than my friend's statement; for the statement of counsel, you know, is from the instructions of the client, and the instructions of the client may deserve no more credit than a *voluntary affidavit.* I call upon Mr. Butt to shew that by evidence; and if he does not shew you that those notes came into the hands of De Berenger from some other quarter, for some other reason, as a reward for some other service, it is impossible for you to resist the conclusion that they were the reward of De Berenger, for the guilty services which he rendered in this fraud; and if so, it was a reward from Lord Cochrane—it was a reward from Mr. Cochrane Johnstone—it was a reward from Mr. Butt: they are one and the same: there is an identity between these three persons that hardly ever existed; they have but one mind, they are inseparably connected."

Mr. Gurney then read a letter of Cochrane Johnstone's, saying that M'Rae, for 10,000*l.* reward, would discover the

authors of the hoax: "I am happy to say that there seems now a reasonable prospect of discovering the author of the late hoax; and I cannot evince my anxious wish to promote such discovery more than by assuring you that Lord Cochrane, Mr. Butt, and myself are willing to subscribe 1,000*l.* each, in aid of the 10,000*l.* required by Mr. M'Rae."

"Gentlemen, this letter calls for more than one observation: I cannot forbear to make one upon the term which Mr. Cochrane Johnstone employs to describe this transaction —'A HOAX,' a mere joke, a matter of pleasantry. Gentlemen, a young, a giddy, an unthinking and careless man, who had had no concern in the transaction, and who had never been suspected to have had any, might perhaps, in conversation, make use of that term; but Mr. Cochrane Johnstone is not young, he is not giddy, he is not unthinking, he is not inexperienced, he has seen much of the world, he is a cautious man, he is a man of high and noble family, he knows that he is suspected of having been a party in this transaction, and yet he calls it a HOAX! I beg to know what word in Mr. Cochrane Johnstone's vocabulary is to be found to express FRAUD? I presume he would call obtaining money by false pretences an indulgence of the imagination, and playing with loaded dice a mere exercise of ingenuity. * *

"Gentlemen, when Lord Cochrane, a few years ago, was preparing for an attack upon the French fleet in Basque Roads, suppose the French admiral had sent this letter to him:—'Sir, You are preparing to attack me to-morrow, the bearer is the best pilot on our coast, I should be sorry that you should run upon a rock, he will pilot you safely, do but accept his services; but, as his skill is great, his price is high —he requires ten thousand pounds; but, so anxious am I for the success of your enterprize, that I will give him three if you will but give the other seven.'

"Gentlemen, this is the modest proposal which Mr. Cochrane Johnstone makes to the Committee of the Stock Exchange; and when he has so done he affects to be extremely angry that the Committee do not accept it.—Gentlemen, what can be said more; what men would have resorted to this expedient but men who felt that they were on the eve of

detection, and who tried this desperate expedient to see whether they could ward it off.

"Gentlemen, I believe I have now arrived at the end of my long-long trespass upon your attention. Though it cannot be shewn, as in many cases it cannot, that these parties met and conferred and assigned to each his respective part, yet if you find a coincidence in object, and a coincidence in time; if you find the mode of execution precisely the same, is it possible to doubt that these underplotters were the agents of the great conspirators;—that the great conspirators were the authors of the plan, and that the others were executing their subordinate part?

"Gentlemen, I have given you the best assistance in my power to understand and apply the evidence which will be laid before you. They whom I represent have no wish but that justice should be done, and I am sure that at your hands they will attain that justice; and your verdict to-day (which I am sure, after you shall have heard the whole of this case, will be a verdict of guilty) will be a most salutary verdict: it will shew the world that as there is no man beneath the law, so there is no man above it; it will teach evil-minded persons the absurdity of expecting that schemes of fraud can be so formed as to provide for all events; it will teach them that no caution can insure safety; that there is no contrivance, that there is no device, no stratagem, which can shield them from detection, from punishment, and from infamy."

The witnesses were then called in chronological order, beginning with John Marsh.

"Upon the 21st of February I. heard a knocking at Mr. Wright's fore door of the Ship Inn, between one and a quarter after one o'clock. I went out upon hearing that, and, on going out, I found a gentleman there who had on a grey coat and an uniform coat under it. I called for a person at my house to bring two lights across; when I had the two lights, the gentleman had got into the passage: he had a star on his red coat, under the great coat: it is similar to this star [*displayed by Mr. Bolland to the witness*]. He had no other ornament to my knowledge. I asked him where he came from, and he told me he was the bearer of the most im-

portant despatches that had been brought to this country for twenty years. I asked him where he came from? He told me from France. I asked him where he landed? He told me on the beach, and he begged of me to get a post-chaise and four for him: and then I went and called Mr. Wright of the Ship Inn; then he wanted pen, ink, and paper. I had him shown into a room, as soon as Mr. Wright came down stairs; Mr. Wright gave me a sheet of paper, and pens, and ink, which I carried into the room; I gave it to him and he began to write upon it; he called for a bottle of Madeira and something to eat. I think that is the gentleman" [*pointing out the Baron*].

Mr. Gurney here interposed. "I will thank Mr. De Berenger to stand up."

Mr. Park. Not unless his Lordship desires it, he need not stand up.

Lord Ellenborough. He will make his election whether he will stand up or not.

Mr. Park. He is not to be shown about like a wild beast as he has been.

The witness Marsh then went on with his story. "I went to get horses ready for him with all possible despatch. He told the two postilions he would give them a Napoleon each."

His cross-examination by Mr. Park elicited nothing of importance. "I am not in the least connected with the Ship Inn, but, on hearing this knocking, I went across to see who the gentleman was out of mere curiosity. I did not observe whether it was moon-light, foggy, or star-light. [It did not signify, said Lord Ellenborough, which it was, for he saw him by candle-light.] I was with him about five minutes altogether, but I cannot speak to a minute; he was in great haste to get away: I should think he was not more than twenty minutes at Mr. Wright's altogether. I held the candles, while the boots unlocked the parlour door, and I went and put them on the table; he wished me to quit the room, and I did not go in any more. I never saw him before, nor yet since, till to-day, but I can take upon me confidently to swear that this is the man; I am very well satisfied of it."

The conviction of this witness as to the identity was supported by Mr. Gourley, a hatter at Dover, who carried the

candles into the parlour. "The gentleman was walking about in a red uniform, trimmed with gold lace, with a star upon his breast, and he had a cap on similar to that [*pointing to the fac-simile produced with gold lace on it*]. I asked him what news, having heard them say he was a messenger. He said messengers were sworn to secresy, but that he had got glorious news, the best that ever was known for this country. He rang the bell, and called for pen, ink, and paper, to write a letter to send off to the admiral at Deal. I took leave of him before he had finished the letter; the candles were sufficiently near him to observe him; that is the gentleman, and I have not the least doubt.'

A juryman asked, Are you sure that is the man?

A. That is the gentleman that I saw there.

Lord Ellenborough clenched the question. You have no doubt whatever?

A. No, I have none in the least.

A cooper of the name of Edis spoke with equal particularity to the person of the despatch-bearer. "I saw him first at the Ship. He was in a room at the time, walking up and down the room. I observed his dress; he had a grey great coat and regimentals, scarlet trimmed with gold. I did not particularly notice any other ornament; he had a cap with a gold band, that was the colour of the coat; it was a slouched cap; it appeared to be made of a kind of rough beaver. I do not know whether it was black or brown; it was rather flat all round, and had no rim like a hat. I saw him sit down and write. I have no doubt that it is he; I had never seen him before that night nor since."

Being cross-examined by Mr. Park, whether he had been out of court during the examination of the previous witness, the Chief Justice interrupted, "A deaf man is rather an awkward man to be an eavesdropper!"

Mr. Park. I could not put so silly a question as that.

Lord Ellenborough. He is the very last man that one should suspect. He could not hear if he was in court.

Mr. Park. If he had been as deaf as deaf could be, if he had seen a person point at the defendant, that would have been sufficient for his purpose.

Lord Ellenborough. But you saw how he searched round the court before he found him.

Mr. Park. But when I have a case presented to me I must do my duty, however painful it may be.

Lord Ellenborough. Certainly, it is my wish you should.

Mr. William St. John, the next witness, spoke to the dress with something of a star on. "He was walking up and down the room at a very good pace. I asked him whether he knew anything of the coming of one Johnson (a messenger whom the witness expected)? He said he knew nothing at all about him, and begged I would leave him to himself, as he was extremely ill."

His inquisitiveness made his company *de trop.* "I can point the gentleman out," he added "he is behind me: I have not the least doubt of it."

The note that had been despatched by an express messenger to the Port Admiral was then produced, and Mr. Lavie, the attorney for the prosecution, spoke to his belief of its being in De Berenger's handwriting. Mr. Serjeant Best then showed three papers to the witness, and asked —

Q. Do you believe these to be Mr. De Berenger's handwriting?

A. These are all like his handwriting.

Lord Ellenborough. I think this should be kept for your case. I never saw any thing like this in my life.

Mr. Gurney. I take for granted these are meant to be produced in the defence.

Lord Ellenborough. You must be conscious that you are doing an irregular thing in tendering them now.

Mr. Park. I am not conscious, my Lord, of doing an irregular thing.

Lord Ellenborough. I mean in tendering evidence at a time when it is not open to the defendant to do so.

Mr. Park. But I may try the credit of the witness by showing him these.

Lord Ellenborough. There is no doubt that every defendant has a right to give evidence in his turn; but at present we are upon the case of the prosecution.

After this sharp dialogue, in which the sturdy independence of Mr. Park showed to advantage against the martinet dis-

cipline of the Judge, the letter was read, — a most artful and clever composition for imposing on the credulous and unwary.

"'Dover, one o'clock A. M., Feb. 21st, 1814.

"'Sir,

"'I have the honour to acquaint you, that the L'Aigle, from Calais, Pierre Duquin, Master, has this moment landed me near Dover, to proceed to the capital, with despatches of the happiest nature. I have pledged my honour that no harm shall come to the crew of L'Aigle; even with a flag of truce they immediately stood for sea. Should they be taken, I have to entreat you immediately to liberate them; my anxiety will not allow me to say more for your gratification than that the allies obtained a final victory, that Bonaparte was overtaken by a party of Sachen's Cossacks, who immediately slayed him, and divided his body between them. General Platoff saved Paris from being reduced to ashes; the allied sovereigns are there, and the white cockade is universal; an immediate peace is certain. In the utmost haste, I entreat your consideration, and I have the honour to be,

Sir,
Your most obedient, humble servant,
R. De Bourg,
Lt.-Col. and Aide-de-Camp to Lord Cathcart.

"'To the Honourable T. Foley,
Port Admiral, Deal,
&c. &c. &c. &c.'"

Admiral Foley was then called. "The letter was brought to me that the boy brought to the house. I was a-bed. I read the letter in bed. I sent it enclosed in this letter to Mr. Croker. I arose immediately, and sent for the boy in to my dressing-room; I questioned the boy a good deal, for I must say I did not believe the letter. I did not telegraph the Admiralty, because the weather was too thick: it was then three o'clock and dark: the telegraph would not work."

The astute writer was next put in motion from his starting place Dover, and traced stage by stage. Thomas Dennis spoke to driving the post-chaise from the Ship at Dover early on the morning of the 21st of February to Canterbury to the Fountain Inn. "I drove only one person; it was a man: it was too dark to see how he was dressed. I had the leaders; he gave me and the other lad a Napoleon a-piece."

The coin formed some mark of identity. "I sold it for a one-pound note. Persons do not often give us Napoleons for driving them: I never had one given to me before."

Edward Broad, the next driver, carried his fare to Sittingbourne, and received also a Napoleon. Dennis took him on to Rochester in the same chaise, and was also made glad with a Napoleon. The arrival of the chaise and four at the Crown Inn, Rochester, was stated with particularity by the landlord, Mr. Wright, who described the person of De Berenger and their conversation together. "It was a tall person, rather thin than otherwise, who came in the chaise; he had a pepper and salt great coat, with a military scarlet coat under it; the upper coat was nearer the colour of that coat than any thing I could state [*pointing to the coat on the table*]; the scarlet military coat he had under that was very much trimmed with gold lace down the front, as it appeared by candle light, and a military cap with broad gold lace down it; it appeared to me to be cloth or fur; it appeared to be nearly the colour of the great coat." With the exception of one discrepancy noticed by *Lord Ellenborough*, his report of the dress seemed accurate. "I went into the yard," he continued, "and found a gentleman looking out at the front window of the chaise, and he said he was very hungry; could he get any thing to eat? that he had ate nothing since he had left Calais. I asked him if he would have a sandwich, as I supposed he would not get out of the chaise? He said he would get out, and he did get out, and I took him into our bar parlour. When he got there I said, I am led to suppose that you are the bearer of some very good news to this country. He said he was; that the business was all done—that the thing was settled. I asked him, if I might be allowed to ask him what was the nature of his despatches? He said, He is dead. I said, Who? He said, The tyrant Buonaparté, or words to that effect (I believe these were the exact words). I said, Is that really true, Sir?" Upon which this gentleman seems to have been piqued at having his veracity questioned, and said, "If you doubt my word, you had better not ask me any more questions." In answer to which Wright, not being willing to have his curiosity unsatisfied, said, "I made an apology for doubting the veracity of his story, and asked

him what were the despatches?" He said there had been a very general battle between the French and the whole of the allied powers, commanded by Schwartzenberg in person; that the French had been completely defeated, and Buonaparte had fled for safety; that he had been overtaken by the Cossacks at a village (which I think was called Rushaw) six leagues from Paris; that the Cossacks had there come up with him, and had literally torn him in pieces; that he had come from the field of battle from the Emperor Alexander himself, and that he either was an aide-de-camp of the emperor, or one of his principal generals. He threw down a Napoleon on the table in payment, and drove off. Mr. Wright had proceeded thus far, and then he looked round the court, and, fixing upon De Berenger, said, "I believe that is the person, I have no doubt; it is certainly the gentleman; I have never seen him before or since."

Lord Ellenborough again drove home his identity.—From the circumstance of his appearance, looking at that person before you, you have no doubt?

A. I have no doubt of it. I can swear to that gentleman, though I have never seen him since.

The landlord at Dartford, who saw the post-chaise arrive with this messenger of good news, being told to look round, could not be positive as to the man. A post-boy named Shilling drove him away. There ensued the following suggestive dialogue.

Mr. Gurney. Before Shilling comes in, and when what I say is not heard by him, I must say that the person to be identified should hold his head so as to be seen.

Mr. Park. And so he did. I desired Mr. De Berenger to hold his head gently up, and he did it immediately.

Lord Ellenborough. The questions might go much nearer. The witnesses might be asked if that be the person. It is done always at the Old Bailey in cases of life and death, where the prisoner stands in a conspicuous situation. It is less strong in that case; but to be sure, when it is proved in the way it has been, it can be of very little consequence.

Shilling gave an account, truth-telling on its face, of the *nonchalance* of his clever fare. "I had the wheel horses. On

our way to London he discoursed with me a good deal. He said it was all over; Buonaparte was torn in a thousand pieces; the Cossacks fought for a share of him all the same as if they had been fighting for sharing out gold; and the allies were in Paris. We were ordered to go on; we had gone to Bexley Heath before the gentleman spoke. The gentleman then told me not to hurry my horses, for his business was not so particular now, since the telegraph could not work. I told him I thought the telegraphs could not work, for I knew almost every telegraph between Deal and London. He then said, 'Post-boy, don't take any notice of the news as you go along.' I told him I would not, unless he wished me to do so. He said I might tell any of my friends as I returned, for he durst say they would be glad to hear it. He said he had sent a letter to the Port Admiral at Deal, for he was obliged, or ordered, to do so. He said at Shooter's Hill, 'Here is a delightful morning, post-boy! I have not seen Old England a long while before.' Then he asked me which was the nearest coach-stand? I told him at the Bricklayer's Arms. He told me that would not do; it was too public; he was afraid somebody would cast some reflections, and he should not like that. I told him I did not think any body would do that; they would be so glad to hear of the news. He asked if there was not a hackney-coach stand in Lambeth? I said yes. He said, 'Drive me there.' Not finding a coach at Lambeth, Shilling proposed to drive to Marsh Gate, and there safelydeposited his fare with Crane the coachman, after receiving two Napoleons. I should know him in a moment. I have seen him and knew him again; that is the gentleman [*pointing to De Berenger*] I have no doubt. I saw him once before in King Street, Westminster, in a room. I knew him then the moment I saw him. I never had the least doubt about him; the moment I saw him I knew him." This proof of identity seemed complete; but he was shaken in cross-examination; and the following important fact was not alluded to by Lord Ellenborough in his summing up.

Mr. Richardson. Did you not describe the person as one that had a great red nose and a blotched face?

A. A red nose I said, and his face was very red that morning, for it was very frosty. I said he was pitted with the small-pox.

Lord Ellenborough. Red or not, sure you are of the identity of the face.

A. Yes, I am sure of it.

This omission was justly complained of by Lord Cochrane as an important suppression of evidence favourable to the accused, and the interruption of the Chief Justice marked too plainly a foregone conclusion.

William Bartholomew, the waterman, saw the gentleman get out of the chaise into a hackney coach; he stepped out of the one into the other. "I opened the door, and let down the step for him; he had a brown cap on, a dark drab military great coat and a scarlet coat under it; I only took notice of the lace under it. The gentleman ordered the coach to drive up to Grosvenor Square. I really think that is the gentleman, it is like him; dress makes such an alteration that I cannot with certainty say."

Mr. Richard Barwick, a clerk to Messrs. Patons and Co., bankers, in Pall Mall, related the arrival of the chaise. "I remember passing by Marsh Gate on the morning of Monday, the 21st of February. I observed a post-chaise with four horses; it had galloped at a very great rate; the horses were exceedingly hot, and I saw a man getting into a hackney coach that the people told me had come out of that chaise. I followed it, and saw it as far as the little theatre in the Haymarket; I wanted to know what the news was. I was told it was a general officer arrived with news. It was 9 o'clock, my time at the office, and I did not go on. The coach had passed by the public offices."

William Crane, the coachman, is the first witness who tracks the chief conspirator to cover at Lord Cochrane's. "I drove into Grosvenor Square; the gentleman then put down the front glass and told me to drive to No. 13. Green Street. The gentleman got out there, and asked for a colonel or a captain somebody; I did not hear the name, and they said he was gone to breakfast in Cumberland Street. The gentleman asked if he could write a note to him: he then went into

the parlour. The gentleman gave me four shillings; I asked him for another. He took out a bit of a portmanteau that he had and a sword, went in and came out into the passage again, and gave me another shilling. The portmanteau was a small black leather one, big enough to wrap a coat up in. I saw that gentleman in King Street, Westminster, at the messenger's house. I think this is the gentleman here. When I saw him in King Street, as I came down stairs, he looked very hard at me. It was something of the same appearance, though he had altered himself a great deal in his dress."

On his cross-examination he added: "This person, when I got to Green Street, I saw had a red coat underneath; the waterman opened the coach door." But for this cross-examination, not a word would have been said about the fatal red coat.

George Odell, a fisherman, next proved the finding of the disguise with a drag. "In the month of March, just above Old Swan Stairs, off against the iron wharfs, when I was dredging for coals with a drag, I picked up a bundle, which was tied up with a piece of window line, in the cover of a chair bottom; there were two sleeves of a coat and then a coat cut to pieces and embroidery, a star and a coat of arms with two figures upon it; it had been sunk with three pieces of lead and some bits of coal. I gave that which I found to Mr. Wade, the Secretary of the Stock Exchange; it was picked up on the Wednesday, and carried there on the Saturday. I picked this up on the 24th of March."

Simeon Solomon next told the purchase of the dress, but prudently abstained from identifying his customer. "On Saturday the 19th of February a military dress was purchased at my house; a military great coat and foraging cap, made of dark fur with a pale gold border; I have since had a cap and a coat made exactly resembling them, as nearly as I could possibly recollect. [They were exhibited on payment of a small fee to the gaping multitude.] I have examined these fragments, and they appear to be part of the same materials, the same description of embroidery, the same description of coat. I had a conversation with respect to the great coat, and also the cap. The purchaser observed that they were wanted for a person who was to perform the

character of a foreign officer; they were to be sent into the country that evening. He took them away with him in a coach: he had a small portmanteau with him. He did not beat me down in the prices, or make any observations about money, but merely paid for them. I was conversing with him for a short time. I have been since introduced to a person at the Parliament Street coffee-house; I cannot undertake to say it was the person: in point of appearance he resembles him, except that the person I served had whiskers." The witness then looked at Mr. de Berenger, and said: "This is the person I was introduced to at the coffee-house in Parliament Street. I really cannot undertake to swear that he is the person. The gentleman that represented himself to be Mr. Wilson was dressed in a different manner; he had black whiskers, and from that circumstance I could not possibly undertake to swear it was the same person. He resembles the person, except that the person I served had whiskers."

Q. By Mr. Gurney. Making allowance for whiskers, which may be taken off in a minute, what is your belief upon the subject?

A. Upon my word it is impossible for me to say.

Q. You can certainly say what is your belief?

Lord Ellenborough. You are not asked as to whether you are certain, but to your belief.

A. If I were to say I believe it is the person, I might say wrong; if I were to say I believe it is not the person, I might say otherwise: it may be the person, but I cannot undertake to say; I believe it is.

Mrs. Abigail Davidson, the woman with whom Mr. De Berenger lodged, spoke to his finally quitting her house on the 27th of February, on a Sunday. "I do not remember where he was the Sunday before that. I did not see him on the morning of that Sunday. I cannot say whether he slept at home that night; we never attended to the door. I usually heard him in the morning. I did not hear him as usual on the morning of the 21st; I used to hear the bell ring for the servant more than once. He occupied the whole of the upper part of the house; I and my husband had the two parlours.

I heard him also occasionally playing the violin and trumpet, and he used to walk about: he then wore whiskers. I generally heard his bell. I did not see him come home on the Monday; I saw him in the evening about half past five. I had heard him in the afternoon. He quitted my house on the Sunday after. I remember a gentleman calling on the Saturday night, the day before he quitted, with a letter: I have since seen that gentleman again; I saw him at the Temple. I think Mr. De Berenger's servants went out about two or half-past on that Sunday. My husband observed to me, about eleven o'clock that Sunday forenoon, 'Our lodger is gone out with a new great coat on.'"

Mr. Lavie then swore that the person Mrs. Davidson saw at the Temple getting out of the hackney coach, was Mr. Cochrane Johnstone, who brought the letter on the Saturday.

Mr. Launcelot Davidson, the husband of the last witness, confirmed his wife in other particulars, and that De Berenger went out about eleven of the forenoon of Sunday, 20th February. "He did not come home again at all during that day that I saw or heard; I did not see or hear him the next morning before nine; I go out at nine. I generally used to hear him before that time walking about, or ringing for his servant. I made an observation upon his servants going out on the Sunday at two. I do not think they were at home at four o'clock, which was Mr. De Berenger's usual dinner hour. The man-servant always attended him when he dined, and the woman dressed his dinner. He did not dine at home on that Sunday.

A very summary *résumé* will suffice for the next evidence, applicable to the Northfleet part of the transaction. "A Mr. Vinn went to the Carolina coffee-house on the 15th February, where he met Mr. M'Rae; he told me he had known me for a long time, and that he thought he had now an opportunity of making my fortune; that he knew, from the knowledge I had of languages, I should have an opportunity of benefiting others and myself. I asked him what the object was. He said not to travel abroad, but probably at home, and that almost immediately; that it was a scheme that he had in contemplation to be employed by men of affluence and consequence, and that no man was more competent than myself. He said there was no moral turpitude in the business, but that it was

practised daily by men of the first consequence; that it was only biting the biters, or, in other words, a hoax upon the Stock Exchange, and that by going down to Dartford, Folkestone, or Dover, I should receive instructions; that it was necessary to have for himself and me two dresses of French officers. I there stopped him, and asked him whether he really meant to be employed in this transaction; to which he replied certainly; and that I should be in the first place remunerated, and ultimately have a fortune made me. I replied with indignation that I would as soon be concerned in a highway robbery; that I thought he had known me better. I expressed myself rather loudly, as offended at it. He endeavoured to silence me, saying hush! that we might be overheard. He took me up Cornhill, where I left him. I told him if he would go with me to another coffee-house, I would introduce him to a person who, though I myself would not undertake the business, might do it. I took him there; it was the Jamaica coffee-house. There was a young man there, to whom I was about to introduce him; but he turned round suddenly, and I did not. Upon M'Rae returning, he asked me whether I would not give him in writing some French sentences, sentences such as *Vive le Roi, Vive les Bourbons, Vive Louis Dixhuit:* I gave him those terms in writing." On his cross-examination, he explained that his object was not to get another person really to undertake the business, but to furnish himself with a confirmatory witness.

Sarah Alexander, with whom M'Rae lodged in Fetter Lane, saw him go out on Sunday the 20th, and return before twelve at noon, bringing with him two coats and two opera hats: they were inclosed in a bundle. "I saw the coats; they were very dark blue, done with braiding; they were officers' coats; the flowers were of worsted embroidery. They were flat hats. One coat was lined with white silk: one coat and one hat was better than the other; the one had a brass plate and gold tassel. He put them on and walked about, and asked whether he did not look like an officer. He wanted two cockades to be made round. He applied to his wife. His wife asked what he was going to do with them; he said to deceive the flats! He put the cockades into his pocket, and the hats and

coats in a bundle, and went out saying he must be at Billingsgate to start at two by the Gravesend boy. The next day I met him at a quarter before two in Cursitor Street. He was dressed the same as he went out, in his own clothes; he had apparently the same bundle; he had brought home one coat and one hat; the best coat and hat were in the bundle. He said he had slept at Northfleet; but he had the appearance of not having been a bed at all. He brought home the cockades in his pocket. He appeared very tired. His wife unripped the cockades, and took the white lining out of the coat, and carried it to the dyers to be dyed black. From December to February we lodged together; we kept but one fire and lived a good deal together. He was in a state of great indigence, and never had any money except a shilling or an eighteenpenny piece now and then. After the Northfleet expedition, he had a 10*l.* note and a 1*l.* note, and the day before he finally left his lodgings he had three 2*l.* notes; he finally left his lodgings on the 2nd or 3rd of March.

"On Sunday the 27th of February, he bought a new coat and a new hat. On Monday the 28th, he said he was to have 50*l.* for what he had done. He wished, when he went away finally, for nobody to know where he was going, and I wished not to know."

It was then shewn by the postmaster and post-boy at Dartford, that Sandom, M'Rae, and Lyte drove furiously from Northfleet at eight o'clock on Monday morning, wearing white cockades and large flat hats; that they were forwarded with four horses carrying laurel branches at their heads to London, where they arrived about eleven o'clock, and drove over London bridge, down Lombard Street, along Cheapside, over Blackfriars bridge, to the Marsh Gate. When in sight of the Marsh Gate, the post-boys pulled up, the parties took off their cocked hats, put them into their handkerchiefs, put their round hats on, and then walked away. Mr. Baily then related Holloway's confession before the Committee of the Stock Exchange; that he was not aware of the serious turn it would take; but finding that it had taken so serious a turn, he had come forward and confessed it, in the hope that the Stock Exchange would not pursue it to extremities. He was asked whether he had any connection with Lord Cochrane,

Mr. Cochrane Johnstone, or Mr. Butt, and he denied that he had. He denied also any connection with De Berenger.

Several brokers were then called to speak to the large dealings and gains of the principal defendants; the balance of Cochrane Johnstone was 250,000*l.* omnium at the leaving off of the business on Saturday. "I received an order from him on the Saturday," said Mr. Hitchens, "to sell 50,000*l.* at one per cent. profit on the Monday, and that I sold before I saw him—before 11 o'clock on Monday. I sold the whole of his stock that day by his directions at 29, 29$\frac{1}{8}$, 29$\frac{1}{2}$, 30$\frac{3}{4}$, and 30$\frac{7}{8}$."

It appeared, on cross-examination, that for a length of time they all had their hands full of omnium and consols; and the omnium having obtained a price which would allow of a profit, all was sold; they were both buyers and sellers: the persons who were interested to prevent a depression being compelled to feed the market occasionally as buyers. They appear to have had a larger balance, at least, Mr. Cochrane Johnstone appears to have had, on an antecedent day, than he had on the 21st of February. On that day, 420,000*l.* of omnium, and 100,000*l.* of consols, belonged to Mr. Cochrane Johnstone; 139,000*l.* of omnium to Lord Cochrane; and to Mr. Butt 200,000*l.* omnium, and 178,000*l.* consols. It appears that there was sold for Mr. Butt on that day, 24,000*l.* more of omnium than he had, and 10,000*l.* of consols short of what he had; and with that slight exception, they on the Monday (to adopt the strong vernacular of the Chief Justice) evacuated themselves of the whole. The profit upon the sales was 10,450*l.* Lord Cochrane's share of this profit was 2,470*l.*; Mr. Cochrane Johnstone's, 4,931*l.* 5*s.*; and Mr. Butt's, 3,048*l.* 15*s.* If no news had arrived on the 21st, no person could have sold this large quantity of omnium and consols, without very much depressing the market. The first decline was about the middle of the day; the recovery of the funds was generally attributed to the chaise passing through the city: the chaise through the city carried it to its highest amount. The accounts were time-bargains, from the magnitude of the sums.

There were some salient points in the cross-examination of

Serjeant Best, which elicited the fact of clever management in the getting up of the case for conviction.

Q. You have spoken of these gentlemen engaging in stock transactions; you have been carried back no further than February the 8th: they had all three of them bought to an enormous amount long before that time—had they not?

A. Certainly.

Q. And as to sales, had they not sold very large sums long antecedent to the month of February?

A. Oh yes!

Q. Can you state as to my Lord Cochrane, for instance, had he not sold hundreds of thousands before that time?

A. Yes.

Q. I would ask you, did he not from time to time, down to that time, continue to be selling large sums?

A. Yes.

Q. Lord Cochrane, you have told us, was not there on the morning of the 21st?

A. No, he was not.

Q. For a great many days, I believe I may say months, had you not been directed to sell their stock, whenever it should so rise that you could get one per cent.?

A. Yes.

Q. If I had been at the Stock Exchange that morning, and had found the omnium up at 32, and had known that the good news must soon turn out to be all invention, I might have sold, if I had liked, a million of stock, according to the practice of the Stock Exchange, though I did not happen to have a sixpence?

A. It certainly might have been done.

Q. Is it not the practice for a man who wishes to gamble in the funds to sell stock, which he has not, when he thinks they will fall?

A. I know it is done.

Q. A man who thinks the stocks may fall, may sell stock he has not to any person who thinks they may rise?

A. It certainly is done.

Q. Does it appear whether Lord Cochrane bought any thing on the Saturday before?

Mr. Gurney. It appears from the account that he bought 20,000*l.*, *and sold* 17,000*l.*

Mr. Serjeant Best. You have told us that all those three persons, Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt, were very large speculators: did they always speculate the same way, or, on the contrary, when one bought, did not the other very often sell?

A. It has been the case.

Q. Has not that happened often, several times?

A. Yes it has, several times.

Mr. Wright, who printed an affidavit by Lord Cochrane's direction, on slips for the newspapers, then deposed to a remark of Lord Cochrane, which gave the first information of the real Simon Pure. "In a conversation with Lord Cochrane, when he was giving me directions, he said, I once saw Captain De Berenger at dinner at Mr. Basil Cochrane's. I have no reason to think that he is capable of so base a transaction; but if he is, I have given the Committee of the Stock Exchange the best clue to find him out."

This affidavit, the turning point of the case, the pivot on which his conviction rested, was then read; and afterwards, by natural sequence, the parol admissions.

Mr. Le Marchant, a witness, appointed to a situation of 1200*l.* a year in Antigua, whom, said Lord Ellenborough, Government might do very well in letting ride at anchor here without going abroad, gave a very damaging narrative of some conversations, almost amounting to confessions, with De Berenger.

"From the 10th to the 16th of January he spent his evenings with me occasionally. I learnt that he was connected with Lord Cochrane and Mr. Cochrane Johnstone; he stated that he was about to go to America, under the command of Lord Cochrane. Upon his mentioning this, I put the question to him, how he could possibly do it under the embarrassments that he lay under: upon which he answered that all was settled on that score. This conversation passed about the 14th of February. He said that for the services he had rendered to Lord Cochrane and Mr. Cochrane Johnstone, whereby his Lordship could realize a large sum

of money, by means of the funds or stocks. His lordship was his friend, and had told him a few days before, that he had kept, unknown to him till that period, a private purse for him, De Berenger; he frequently mentioned particular intimacy of dining, breakfasting, and supping with his lordship; he said in this purse he had deposited a certain per centage out of the profits which his lordship had made by his stock suggestion. I afterwards heard of the events of the 21st of February, and made known my suspicions, that Captain De Berenger had been active in them."

He denied on cross-examination that he gave his evidence from resentment, or from any refusal to lend money, a denial refuted afterwards by his own letters.

The evidence of the Honourable Alexander Murray to further admissions of the garrulous De Berenger, though more truthful, was of less importance. "I am not at present an officer in His Majesty's service: I am now in the King's Bench. I have been acquainted with Captain De Berenger a year and a half; I was introduced to him by Mr. Tahourdin, who is my solicitor and his. We were frequently together. He was, I knew from himself, employed in planning out a small piece of ground for Mr. Cochrane Johnstone. He said that he had a plan in view, with Lord Cochrane and Mr. Cochrane Johnstone, which, if it succeeded, would put many thousand pounds in their pocket. I asked, is that the plan with regard to Ranelagh, which it was proposed to build on Mr. Cochrane Johnstone's land? and he said no, it is not; it is a far better plan. I knew there was a very particular intimacy between Mr. De Berenger and Mr. Cochrane Johnstone. I understood Lord Cochrane was a more recent acquaintance; I understood that there was a great acquaintance between him and Mr. Cochrane Johnstone, and that he was with him almost every day."

Upon his cross-examination he said, "I have known Mr. De Berenger a long while: he is a man of considerable science and attainments. He had been for a considerable time before employed in drawing plans for the Ranelagh. Mr. Cochrane Johnstone has a house in Alsop's buildings, and about an

acre of land behind it, which was to be converted into something upon the plan of the old Ranelagh."

Mr. Park, in his zeal to afford the best countenance he could to his client, was checked by the judge.

Q. Mr. Park. Do you know whether Mr. De Berenger was very much employed in plans of that kind for the Royal Family and others?

A. He was.

Lord Ellenborough. If you see any tendency to the advantage of your client, I will not interrupt you; but at present this seems to have no bearing.

Mr. Park. I assure your lordship, and I know I shall have credit for believing what I state, I would not at this hour of the night pursue it, if it was not important; but I feel it necessary, when it is stated that there has been a wonderful intimacy, from which conspiracy is sought to be inferred.

Lord Ellenborough. I will not ask you to go into your reasons, if you only say you think it material.

Mr. Park. As far as you have seen Mr. De Berenger for the length of time you have described, do you not believe him to be a man of honour and integrity?

A. I certainly do, from every thing I have seen; I saw nothing but the most perfect gentleman during the time I lodged under the same roof.

William Curling, called to prove the intimacy of the parties, confirmed Lord Cochrane's statement as to his having a mere dinner acquaintance with Mr. De Berenger. "I am servant to the Honourable Basil Cochrane. Mr. Cochrane Johnstone and Lord Cochrane visited at my master's house in company with Baron De Berenger, the gentleman there [pointing to him]. De Berenger came there to dine as a visitor: he was invited by my master. Lord Cochrane and Mr. Cochrane Johnstone dined there with him once; Lord Cochrane did not the second time: they appeared to be acquainted with him."

The apprehension of De Berenger, and the finding of the bank notes, were then proved by Joseph Wood, the messenger of the Alien Office. "I left London on the 4th of April in

order to find De Berenger. I found him at Leith on the 8th of April. I found him in possession of a writing-desk containing papers and bank notes; there were guineas and half guineas, and two Napoleons in the pocket-book." He also produced a paper of memorandums, and a road book.

An extract was then read, after a sharp struggle against its admissibility by Mr. Park, calculated to throw grave suspicion on the writer and the defendant Butt, but equally important to clear Lord Cochrane of any guilty participation.

Mr. Gurney. Mr. Jones, I will trouble you to read the first article in that memorandum book.

Mr. Park. That cannot be done.

Mr. Gurney. It is found in his letter case.

Mr. Park. I object till his handwriting is proved. The finding a manuscript in my possession is not sufficient to warrant its being read as evidence against me. Your lordship might confide some paper to me, and it would be very hard to read that against me.

Lord Ellenborough. It is *primâ facie* evidence I think, subject to any observations you make upon it.

Mr. Park. It is found in that thing, not in his pocket.

Lord Ellenborough (to Wood). Was it under his lock?

A. It was in his possession when I took him.

Mr. Park. Am I to be answerable for all manner of things sent to me by my friends?

Lord Ellenborough. I think a paper found under the lock and key of the party is *primâ facie* readable against him; it is subject to observation. If you do not go further, the reading this, as found in his possession, is doing little.

Mr. Gurney (to Mr. Lavie). Do you believe that to be Mr. De Berenger's writing?

A. I have no doubt about it.

The extract was read as follows:—

"Believe from my informant 18,000*l.* instead of 4,800*l.*; suspicious that Mr. B. does not account correctly to him as well as me. Determined not to be duped. No restrictions as to secrecy."

No less than fourteen witnesses were then called to trace the 1*l.* bank notes, sixty-seven in all, found on De Berenger, seven others paid by him at Hull towards the purchase of a watch;

a 40*l.* bank note changed by him at Sunderland; and a 50*l.* bank note paid by his servant. All these 1*l.* bank notes had been given in change to Mr. Butt for two notes of 100*l.* each, handed over in part payment of a cheque drawn by him to Lord Cochrane, and by him passed on to Mr. Butt on the 18th of February. The 50*l.* and 40*l.* notes formed part payment of a cheque drawn by Butt on the 26th of February, and handed to him. All these sums appeared to have passed from Butt to De Berenger at a very critical time. Another bank note for 50*l.*, part of his cashed cheque on the 19th of February, was paid by Lord Cochrane to his coal merchant, showing that he dealt with a portion of the cheque in paying his tradespeople, and with the rest in payments to Butt. With this evidence and the production of the two Napoleons closed the case for the prosecution. It was now past midnight; fifteen hours of a long summer's day had been exhausted, and counsel and jury must have been sinking from fatigue. Under these circumstances, the counsel gave a not unreasonable intimation of their wish for an adjournment.

Mr. Serjeant Best. I wish to apprise your lordship that I think it will be necessary for the defendants to call witnesses.

Lord Ellenborough. I should wish to hear your opening, and to get into the defendants' case if I can; there are several gentlemen attending as witnesses who, I find, cannot, without the greatest public inconvenience, attend to-morrow.

Mr. Park. The difficulty we feel, I am sure your Lordship will feel as strongly as we do, the fatigue owing to the length of our attendance here; but we will proceed if your Lordship desires it.

Lord Ellenborough. I would wish to get into the case so as to have the examination of several witnesses, upon whom the public business of certain offices depends, gone through if possible.

Mr. Park. I have undergone very great fatigue, which I am able to bear; but I would submit to your Lordship the hardship upon parties who are charged with so very serious an offence as this, if their case is heard at this late hour, and then a fresh day is given to my learned friend to reply.

Lord Ellenborough. It will not be a fresh day, when you will be here by nine o'clock, and the sun will be up almost before we can adjourn; I will sit through it if you require it rather than that.

After this brief colloquy counsel succumbed without further murmur or question, a memorable proof of the iron sway with which Lord Ellenborough domineered over his court. A more firm and manly resistance would not have disparaged the counsel, and might have secured the indulgence. It would have saved one innocent client.

The speech of Mr. Serjeant Best, though made by a weary, jaded, and dinnerless advocate, displayed in parts much ability and shrewdness. He professed at the outset that he was scarcely able to discuss effectively "a question of great importance *to the three individuals* whose interests are committed to my charge; for, Gentlemen, upon the issue of this question, with reference to them, depends whether they are to hold the situation in society which they have hitherto held, or whether they are to be completely degraded and ruined.

"Gentlemen, allusions in the course of the day have been made to that which passes at the Old Bailey; no sentence that can be passed there can be felt more by the persons on whom it is passed, than a verdict of Guilty will be felt *by these three persons.*"

Alas for Lord Cochrane that his counsel should have to use the plural instead of the singular number, and plead "*for these three persons*;" for juries are apt to overlook nice shades of difference, and when the cases of three gentlemen are presented together, to consider them all alike.

Serjeant Best protested that he was above taking any technical objections, even if this were an offence which the laws of the country did not reach; as an acquittal on technical grounds would not answer the purpose of the respectable gentlemen he represented. He had avoided looking at the indictment, lest he should see any thing that might force an objection, and prevent the case from being decided on its merits.

After noticing the extreme difficulty, amid such a mass of

evidence, of calling the attention of the jury to the evidence immediately applicable to any particular person, he proceeded to take the three cases in the order in which they stood on the indictment, and separately.

"First, Lord Cochrane's. The only evidence to connect him with the conspiracy was, first, that he did on the 21st of February, sell 139,000*l.* omnium; and, secondly, that Mr. De Berenger was on that morning at his house. As to the bank notes, there was not a single one traced into his hands: for though the two large notes were once in his hands, these large notes were never in the hands of De Berenger. The notes found on him were the small notes given in exchange for them at the Bank, and these were given to Mr. Butt, and not Lord Cochrane. It is perfectly clear, therefore, that though these had been in the hands of Lord Cochrane, from the money transactions taking place between them every day, it was Mr. Butt that was the possessor of those notes, at the time the 1*l.* notes were obtained for them.

"Mr. Gurney had made a most important mis-statement according to his instructions from the Stock Exchange; that Lord Cochrane began his Stock Exchange speculations about one week before the 21st of February; and you must necessarily have understood, as well from the statement of counsel, as from the evidence that has been offered, that Lord Cochrane, about six or seven days only antecedent to the 21st of February, had purchased the whole of the 139,000*l.* that was sold out on that day; that his lordship had never speculated in the funds before, and, therefore, that all his purchases must have been made in order that he might have so much stock to sell at this particular time. But, Gentlemen, it turns out that Lord Cochrane *had been deeply speculating* in the Stock Exchange for several months before, and so the inference, that he purchased this stock with a view to the event that happened on the 21st of February, is rebutted. The witness did not come prepared to state to you, what had been the extent of the sales made by Lord Cochrane on antecedent days; but when he states that he sold largely, (I think I may venture to say, that he sold nearly as much on previous days as on this occasion); you

will find, therefore, nothing to distinguish the conduct of Lord Cochrane on the 21st of February, from that which had been his conduct on many days precedent.

"No particular directions are given to sell on that day, but Lord Cochrane's general directions, from the first moment when he became a speculator in stock, were, that whenever any event should happen by which the stocks should be raised one per cent., the broker was not to wait for particular directions, but to sell; and this large sale of 139,000*l.*, from whence the inference is drawn that Lord Cochrane necessarily knew of the conspiracy which had taken place, was made under these general directions. It is also to be observed, that Lord Cochrane was never present in the city a single hour during the 21st; there is no evidence given that he was there; on the contrary, all the witnesses that have been examined, have told you they did not see him there; all the stock was therefore sold on that day, without any interference on his part.

"Gentlemen, another circumstance has transpired, which I think furnishes a strong observation in favour of all my clients; namely, the practice of selling both stock and omnium, which the seller is not at the time of such sale in possession of. If Lord Cochrane had been privy to the fraud, would he have contented himself with merely selling the stock that he had previously purchased? Would you not have found him selling to every buyer that offered (and on the 21st of February there was no scarcity of buyers at the advanced prices) stock and scrip in any quantity? If he had been privy to the fraud, he must have known that the bubble would soon burst, that the funds would fall back to their former prices, and that by every sale that he so made, he must be a great gainer; yet he is not found selling the value of a shilling in this manner; nothing is sold but what had been previously bought, and that sold under general directions given to the broker previous to the day of sale, and previous to the time when the conspiracy could have been conceived. If his lordship had been one of the conspirators, he must have been found to have made many more thousands of pounds by the

speculations of this day, than he either is or can be proved to have made hundreds. Avarice, always insatiable, which had in this case impelled the defendant to hazard every thing that was dear and valuable to him in life, stops short in the hot pursuit of its object, at the very moment when the most abundant means of gratification are brought within its reach.

"When pressed to find that the circumstance of his selling is proof of his guilt, you will say, that the circumstance of his not selling more than he did, is a still stronger proof of his innocence. My learned friend will have an opportunity in his reply of accounting why his lordship and his supposed co-conspirators did not sell more; and I think he will find it a task that will transcend even his powers, to account for it in a manner compatible with their guilt.

"The clue to the discovery, the thread by which the Stock Exchange wound their way through the labyrinth, was furnished by Lord Cochrane. But for him the Stock Exchange never would have known of the existence of any such person as De Berenger; but for my Lord Cochrane, it is impossible that the Stock Exchange could have instituted this prosecution, because it was by Lord Cochrane's affidavit only that the name of De Berenger was given to them. The mere circumstance of Lord Cochrane's introducing the name of Mr. De Berenger for the first time, in that affidavit, is of itself sufficient to repel the inference arising from the circumstance of De Berenger's going to his house. He comes forward and tells them who that person was, recollecting, at the time he makes the disclosure, that if that person be guilty, he would, by the act he was about to do, deliver him over to their justice. What must those persons think of Lord Cochrane? Who after this can consider him as implicated in the guilt of this conspiracy? The guilty men knowingly and advisedly point out to their prosecutors the only course by which they can be hunted down: such guilty men must be men of too weak understandings to be answerable for their conduct either to God or their country."

Serjeant Best reminded the Jury that they must convict his noble client of moral perjury before they could reject his

sworn statement; and that the naval hero was not sunk so low as to become a perjured villain.

"Recollect, that, before you can convict Lord Cochrane, you must be convinced that this affidavit is altogether false. Gentlemen, it might possibly be said, that that noble Lord, not reflecting on the consequences of such an offence as that imputed to him by this indictment, might be engaged in it; but you must impute to Lord Cochrane a much more serious offence, one for which want of consideration will be no excuse, after that affidavit has been laid before you, or it is impossible for you to say that he can be convicted of this conspiracy.

"I am persuaded that he conceived himself as completely amenable to the guilt of perjury, as if that oath had been taken in a court of justice. What reason has my learned friend given you to-day? what reason can you collect from the former life of this noble person (for he has been before you, and has lived in the view of the public), that can induce you to believe that he is so completely lost to all sense of that which is right and wrong, to all sense of what is due to himself, as to go before a magistrate to make an affidavit, in which he must know he was deposing to that which, at the time he was making the deposition, was absolutely false. I say the oath of Lord Cochrane makes the evidence offered on the other side kick the beam; that there is nothing to put in competition with the affidavit which my learned friend has himself given in evidence."

When defending the contents of the affidavit, Serjeant Best fell into the fatal mistake of admitting an error in the colour of the dress. "His client had blundered, unwittingly confounding red with green." It was the counsel who blundered and betrayed his client, who might be deemed

Falsus in uno falsus in omnibus.

"Gentlemen, it has been said that this affidavit is false in this; that it states that Mr. De Berenger when he came to Lord Cochrane's had on a green coat, whereas it is proved by several witnesses that he had on a red one; but let me suppose that their account as to the colour of the coat is true,

and that Lord Cochrane's account is incorrect; would such a mistake—for it is impossible that it can be any thing but a mistake—weaken the credit due to Lord Cochrane? Men do not commit crimes, unless impelled to the commission of such by some strong motive; what object could Lord Cochrane possibly have for stating that this gentleman came in one coloured coat rather than another? Gentlemen, I think I can account for the mistake. My Lord Cochrane made this affidavit a great many days—I think some weeks—after the transaction had taken place; Mr. De Berenger belonged to a corps of riflemen in this country, commanded by Lord Yarmouth, and the proper dress of Mr. De Berenger, as a member of that corps, was a green uniform: my Lord Cochrane had often seen Mr. De Berenger in this green uniform. His lordship, when he made his affidavit, recollected the circumstance of Mr. De Berenger's being dressed in a military uniform; but there being nothing to fix on his lordship's mind the colour of the uniform, the sort of dress in which he had been accustomed to see Mr. De Berenger presented itself to his lordship's mind as the dress De Berenger wore when his lordship saw him last."

There can be little doubt that Serjeant Best laboured under the mis-impression of his client being really guilty. From this error in his brief, that the real colour of the coat was red, he might naturally infer collusion, and dread calling witnesses to facts in a dishonest case. His peroration was in consequence rather cold and formal than the eloquence of the heart.

"Gentlemen, you have been told, and truly told, that Lord Cochrane is a public character. From the high station in which he was born, and the still higher place in the eyes of his countrymen to which his public services have raised him, his lordship may, without indulging any blameable vanity, one day expect to fill one of the proudest situations in the country.

"Is a man so circumstanced likely to commit so sordid a crime as that with which he is charged? No prospect of gain could hold out any temptation to Lord Cochrane to put in hazard what he now possesses.

"The public character which you have been reminded he

possesses would of itself repel such a charge as that which is made against him, though it were supported by much stronger evidence than has been offered in support of this indictment.

"Gentlemen, I am conscious that, fatigued as I felt myself, when I rose to address you, after having been thirteen or fourteen hours in court, I have very imperfectly discharged the duty which I owed my clients; but, Gentlemen, I hope they will not suffer, from not having their case presented to you as it ought to have been. Gentlemen, I do not press upon you the considerations which, in criminal cases, are often pressed, and with propriety pressed, upon juries. I do not ask you to take this case in a merciful point of view; I do not press upon you the common observation, to temper your justice with mercy. I ask you to look at this case fairly and impartially. If the guilt of these gentlemen be made out, so that you, upon your oaths, must declare them guilty, say so, dreadful as will be the consequence to all these parties; but unless their guilt is made out, if there be nothing but suspicion, you will not, upon your oaths, say that suspicion is conviction. With respect to one of them, he has reflected back on a long and noble line of ancestors more glory than he has received from them; and it would be the most painful moment of my life, if I should to-night find that that wreath of laurel which a life of danger and honour has planted round his brows, should in a moment be blasted by your verdict."

Mr. Park next addressed the jury on behalf of De Berenger with great spirit and energy. The blended simplicity and shrewdness; the intrepidity and honest bluntness; his thinking aloud and desultory parenthetical observations, must have compelled the sleepy jurors, even at one o'clock in the morning, to keep awake.

Mr. Gurney deserved some hard knocks for opening several facts of a highly criminatory nature which he had not proved, and these appear to have been administered with good will by Mr. Park in his right gallant defence: —

"It is now sixteen hours and a half since I left my own dwelling; but though fatigued I must do my duty, and you must do yours, if we can. I am no flatterer of persons who sit

in your place; and I have no difficulty in telling you twelve gentlemen, that, though I have no doubt you are honourable men, you cannot have lived in this city, in which you are all merchants, for the last two months of your lives, without having every hour of the day, and at every meal at which you sat down, had your ears assailed by accounts of this transaction; and there is no one, however honourable he may be, who can prevent his mind being biassed by circumstances stated in common conversation. Gentlemen, I only know this matter publicly; but I declare one could hardly go into any company where the discourse has not been turned upon this very circumstance we are now discussing. Did my learned friend himself follow that course which he prescribed to you? Did he embark no prejudice into this matter? My learned friend will give me leave to say, that I own it is quite new to me, that, in discussing criminal matters, the counsel for the prosecution are to argue it and labour it as they would a cause between party and party: I dare say I have been extremely faulty in that respect, but having been engaged in criminal prosecutions, chiefly in the service of His Majesty, I never thought myself at liberty so to treat criminal prosecutions. I have generally acted on the opposite scheme, and mean, till corrected, so to continue to act; but at all events, I am surprised that my learned friend, with whose good nature in private life we are all acquainted, should have introduced before you that which I say my learned friend's great experience in courts of justice told him, before he pronounced it, he had no right to read in evidence before you. I do not speak lightly of this; you will remember we had an affidavit, supposed to have been made by William Smith, read verbatim from some pamphlet my learned friend had in his hand. He knew perfectly well that it could not be given in evidence. If William Smith was called as a witness, undoubtedly my learned friend might ask him, whether he had not sworn the contrary at another time? but it will be for my learned friend to explain to you, under what rule it was, that he was at liberty to read such a document as a part of his speech, which, by the rules of law, could not be received in evidence in this place.

"Gentlemen, there was another circumstance which my learned friend has introduced to prejudice this case; and, unless I have deceived myself, or my ears have deceived me, I have heard no such evidence given in the cause, as my learned friend stated; a stronger statement to prejudice could hardly be made in a case of this sort; but I heard no such question put to Wood, the messenger, and I listened with all the attention I could to his examination. My learned friend stated, that Mr. De Berenger had been extremely anxious to get back into his hands the identical notes. My learned friend, and his learned coadjutors, never put to any witness, at any one period of this cause, the question, whether Mr. De Berenger made any such application to their knowledge? and all this is a gratuitous statement of my learned friend, but a statement that went to prejudice, or was intended to prejudice, your minds upon the subject, and it undoubtedly was very important. This may have been said in newspapers, but, thank God! I never read newspapers with that attention some gentlemen do, for I think it is a great waste of time. I think it is a disgrace that the press of this country has engendered such an avidity in the public mind to have these things detailed to them; that they indulge it to a degree subversive of all justice. Did that self-constituted Committee of the Stock Exchange, of which I shall speak much more plainly by and by, and tell you what I think of that committee; did that self-constituted Committee of the Stock Exchange, who have brought forward this as a charge against the defendants, make no publication; did they not placard on the doors of their Stock Exchange the names of these gentlemen, members of the legislature, and persons standing so high in the country? Why did they set so infamous an example? I admit to follow it was bad; but to set it, I insist, was much worse.

"Gentlemen, first, upon the subject of what are called voluntary affidavits. It is extremely absurd in magistrates ever to take them; no man who knows the law, if he knew he was taking a mere voluntary affidavit, would swear the person before him. I will suppose that Lord Cochrane knew he was not liable to the pains and penalties of perjury by law; but is Lord Cochrane so reduced in the scale of society

by any thing that has yet appeared before you, that he would, because he could not be prosecuted at law for the perjury, put his name to a direct and absolute falsehood? I believe no man would say of Lord Cochrane, that he had so utterly thrown off all regard to religion, to the sanction of an oath, properly so called, and to the responsibility he stands under in conscience, as that he would go before a magistrate and make an affidavit, because he could not be prosecuted. I think the supposition is so shocking and so degrading to him as a man, an officer, and a Christian, that you will not come to that conclusion. That Lord Cochrane is a brave man, that he has served his country well, no man will deny. Does Mr. Baily then, do the three other brokers, who demurred to the question put to them as to time-bargains; do all this mass of people, constituting the Stock Exchange, now standing within the sound of my voice, mean to say, that because Lord Cochrane has acted so improperly (for I so consider it) as to enter into a time-bargain, therefore he is not to be believed upon his oath? If so, Gentlemen, the Stock Exchange and its doors must be shut up for ever; and the great men who stalk about as the self-constituted Committee of the Stock Exchange must not have any thing to do in future, because time-bargains are their daily bread; they are at that species of traffic daily, conducting themselves in a manner which, whether they like it or not, I say, is most highly disgraceful.

"Gentlemen, is Lord Cochrane to be believed or not? Have you any ground for saying, that this noble Lord has been guilty, not of perjury in the common sense of the word, but of perjury of a much higher kind. I defy all mankind to state how he could have communicated to the Stock Exchange the news this gentleman was supposed to be dispersing abroad, so as to affect the price of stocks. It is too ridiculous and absurd, says my learned friend, to suppose that Lord Cochrane should be coming back to see an officer. Having a brother in Spain, he expected that he should receive accounts of him from a brother officer; is that an unnatural sensation? I trust it will never be so in the bosom of any one to whom I am addressing myself. I do not know

why I am placed here at all, if I am to take for granted facts because witnesses have sworn them; therefore I say, Lord Cochrane might either mistake, upon the grounds upon which the learned Serjeant has stated it; or the fact might be, as my learned friend has stated, that he was not the man; but whether he had this uniform on, which is stated, I have no means of proving from his declaration; but I have Lord Cochrane's affidavit as to his wearing that which was his proper uniform.

"I believe not above twice in my professional life have I seen a prosecutor put in an answer in Chancery of the person who was defendant, and then negative that answer; but I say, there is not that negation of Lord Cochrane's story which can set it aside.

"My client had no right, I acknowledge, to break the rules of the King's Bench, having the benefit of those rules; but where is the great wickedness of it? He gave bail to the marshal to answer the risk.

"Gentlemen, when this person found that he could neither go with Lord Cochrane, nor in any other capacity, to Sir Alexander Cochrane, who was then out of the kingdom, you will ask me, why did he then escape from the Rules? Gentlemen, I will tell you. He went to Sunderland, and afterwards to Leith; and he went there to avoid that which he was apprehensive of, namely, detention by his other creditors, to a very large amount.

"Gentlemen, there have been other prejudices attempted here; they are prejudices that I think could never have entered into the mind of any liberal man,—the proof of Mr. De Berenger being a friend of Mr. Cochrane Johnstone, from the circumstance of his dining with the family. Gentlemen, is every one who dines there to be considered as a conspirator? They are not a committee sitting over their bottle and hatching this infamy. Mr. De Berenger is a man of great abilities; his society and his company were much courted till his misfortunes put him out of the general run of society. There is no doubt of the gentleman who sits before me being in distress of circumstances, but at the same time a most ingenious man; and having done various works of art

for Mr. Cochrane Johnstone, the latter thought himself indebted to him about two hundred pounds, and paid him the money. My client is a close prisoner in Newgate, under a warrant of the Alien Office, and therefore has not the same means and opportunity of conferring with his counsel; for I have never placed myself in that situation, and do not mean hastily to go there, for it is not a very agreeable service, and I would take no man's retainer, if I thought that I must do so; there has not therefore been that communication which we should have had, if our client had been a free man."

Mr. Park then severely rebuked the informer Le Marchant.

"It does not become me (and I am the last man to do it) to arraign any one act of His Majesty's ministers (not one!), but I believe that the exhibition made this day in the presence of some of His Majesty's ministers will have been sufficient to set aside any intention of sending him out under an appointment, if it ever prevailed in their minds; for I do say, I think he would disgrace any country from which he was sent on any public business whatever; I think he would not be long in any situation, before he disgraced himself as a man, and brought disgrace upon those who employed him. But, Gentlemen, I do not know whether you observed another thing, which is, that he shot out of court as if he had had a sword stuck into him, and appeared no more.

"Do you believe that his letter has any other sense, than give me so much money, or I will do so and so. I can only say, he must be well clothed in innocence who can escape, if a man is to be convicted, merely because a paper is found upon him; if a man writes to me a paper containing matter of a criminal nature, and I happen not to destroy it, I must immediately be convicted. I am sorry to say that I receive a great many letters which I do not answer; but does my possession of the letters give ground for inferring an approval of all contained in those letters?

"But, Gentlemen, Mr. Lavie has proved my client's handwriting. I shall call witnesses to contradict Mr. Lavie. But do not misunderstand me: I believe Mr. Lavie to be a very honourable person, and one who would not tell you a falsehood; but I say he has not the means of knowledge. I can only say,

Gentlemen, that a man must be much more attentive to handwriting than most of the persons of my profession, in which I include Mr. Lavie, if he can swear to a handwriting, because he has seen that handwriting once. I have seen my learned friends near me write many times, but I could not swear to their handwriting; if I saw a very bad hand indeed, I should say it was Mr. Serjeant Best's; but let me caution you; you are trying these defendants for a conspiracy; you are trying them for a crime of the greatest and most enormous magnitude; you are trying them for an offence that will shut these gentlemen, if you find them guilty, out of the pale of all honourable and decent society; and therefore, though this subject is one, which, from the singularity of it, may create a smile, it is a matter which you will not smile upon when you come to pronounce your verdict; because upon your verdict must the happiness of these gentlemen depend.

"Gentlemen, I am placed in a very awkward situation as to that paper (the Dover letter), which my client assures me he never saw, and I mean to call witnesses to prove that he is not the writer of it: I do not think it necessary; but I will do it; for it shall not rest upon me that I have not done my duty. But I am placed in an awkward situation as to the handwriting; I do not complain of it, but the witnesses into whose hands I must put that paper, have never seen it. Mr. Lavie has seen it, but Mr. Lavie went to him improperly; for the Stock Exchange had no more right to break in upon Mr. de Berenger, at the Parliament-street coffee-house, than any one of you. I say it was an impertinent intrusion: most disgracefully the messenger allowed Mr. Lavie and the Stock Exchange Committee to pump him upon this matter.

"Gentlemen, it was said by Mr. Gurney in his opening, that he should call the landlord and landlady of the house at which Mr. De Berenger lodged, to prove that he did not sleep at home that night; but they have proved no such thing. These people do not swear that he did not sleep at home; all they say is, that they do not know whether he was at home or not.

"Now, Gentlemen, upon the subject upon which I am about to address you, I do not think it absolutely necessary to go into it; and I should not at this hour in the morning call

evidence, but in a matter so highly penal as this is, and where I am placed in so delicate a situation, and in which, thank God! I can very seldom be placed, I do not think it right to act on my own judgment, where my client assures me that he was not the man, and is an innocent person; and that he is determined (because he knows perfectly well that what he says is the truth) to have his witnesses called; he shall have those witnesses called, for I choose to have no responsibility cast upon me that does not belong to my situation. Gentlemen, I shall prove to you most completely that which will dispose of the case, if it is believed. I trust I have already shown, that it is a case depending upon such frail testimony, as it stands, that it is not worthy of any degree of credit. But I am instructed, that I shall be able to call five or six witnesses, who all saw this gentleman in London, at an hour which was impossible, consistently with the case for the prosecution, and who have no interest, and had better means of knowledge than those who have been called before you.

"Gentlemen, I do not mean to say those witnesses who have been called before you have been perjured; but I mean to say, they had not the same means of knowledge with my witnesses; and that, except one of them, or two at the utmost, they had not the daylight to assist them in the observations they made upon this traveller. Be so good as to recollect the circumstances under which he was supposed to have come to Dover. He is found knocking at the door of the Ship Inn, about one in the morning; the man belonging to the opposite house, having been carousing there at a most astonishingly late hour for a reputable tradesman in the town of Dover, the hatter, the cooper, and the landlord, being sitting together, hear a knocking at the door; and they find a man in the passage of the house. * * *

"Gentlemen, it is a prejudice my client has to encounter, that we have been engaged in this case seventeen hours; and that my learned friend, Mr. Gurney, who opened the case, was in the full possession of his powers, and that he has in a measure forestalled your minds by the evidence he has given, and that the evidence given by me has to eradicate the impressions which his statements and his evidence have made.

"Gentlemen, I am quite aware, though I have not practised a great deal in criminal courts, that the evidence of an *alibi*, as we call it, that is, evidence to prove that the person was not upon the spot, is always evidence of a very suspicious nature. It is always to be watched therefore. But I am sure that I shall have his lordship's sanction for this; that, if the witnesses to be called have all the means of knowledge upon the subject, if the generality of them have no interest at all in the matter of discussion, and if they prove the *alibi* satisfactorily, there is no evidence more complete than that of *alibi*, and that *alibi* will produce advantage in favour of the person who sets it up, according to the nature of that case which is made against him; and if it be merely circumstantial evidence, although that is in some cases much stronger than positive testimony, yet if the evidence against that person is chiefly mere evidence of identity of person, I say that the proof of the *alibi* will receive stronger confirmation, if those witnesses who undertake to identify have not had sufficient means of knowledge upon the subject. I have two watermen here, who will prove to you that on that Sunday morning, which was the first Sunday after the frost broke up, so as to open the river Thames, which had been shut a considerable time, that on the first Sunday after, namely, the 20th of February, this gentleman crossed at their ferry to go over to the Westminster side."

Mr. Park then introduced cursorily the general nature of his evidence, and concluded his unequal but vigorous defence thus:—

"If I call witnesses to prove, not by vague surmise, never having seen him before, that De Berenger was in their society and company that evening so late as to render it impossible that he should have been at Dover that night, the case is at an end. But, supposing that the evidence of *alibi* should not be satisfactory, it then comes back to the other observations made in the prior part of the defence.

"Gentlemen, this is the general nature of the defence I have to make to you. You will, I have no doubt, endeavour to free yourselves from all prejudice infused into your minds, and will come to your conclusion with a desire to do justice."

Serjeant Pell, on behalf of the three other prisoners, confined himself to the point that the plots were two, and independent of each other.

"I should have supposed, in a prosecution of this kind, that if there had been any connection between the two plots, it would have been traced in some way or other; you observe the minute points which have been made in every other part of the prosecution. There has been labour unexampled; witnesses brought from the most distant parts of the kingdom; no expense spared; every thing done that could be done to make good the charge against four of the defendants upon the record. Is it not a most extraordinary thing, if Holloway, Lyte, and Sandom, were at all connected with Lord Cochrane, Mr. Cochrane Johnstone, or the two other gentlemen, that no trace can be found, no clue can be discovered, that can connect the one with the other? I think you will be of opinion with me, that the two plots are altogether distinct from each other, and that my clients, although morally guilty, must be acquitted upon the present charge. You well remember the strong disposition there was at that time, for every person, those at least who were disposed to do unjust and unfair things, to invent such reports as should enable them to sell their stock at an unreal price."

When Serjeant Pell had finished his ingenious address, Lord Ellenborough said,—"Gentlemen of the Jury; it appears to me this would be the most convenient time for dividing the cause, as the evidence will occupy considerable time, probably. I cannot expect your attendance before ten o'clock."

It being now three o'clock on Thursday morning, the Court adjourned to ten o'clock.

When the Court met on the morning of Thursday, the 9th of June, the case for the defendants was commenced by reading the correspondence between Colonel Le Marchant and Lord Cochrane, which completely contradicted the sworn assertion of the Colonel, that he did not give his evidence from resentment in consequence of being refused a loan of money. His own letters covered him with infamy; even Lord Ellenborough gave him up.

The following extraordinary production ushered in this modest informer:—

"Gloucester Hotel, Piccadilly, April 6th, 1814.

"My Lord,

"Although I have not the honour of your acquaintance, I beg leave to address you, to solicit an interview with your Lordship, for the purpose of explaining a conversation I had with Mr. De Berenger, a few days prior to the hoax of the 21st February last, and which must be interesting to you. If your Lordship will condescend to appoint an hour, I will not fail attending punctually at your house or elsewhere.

(Signed) "J. Le Marchant.

"Rt. Hon. Lord Cochrane,
&c. &c. &c."

This singular epistle not being noticed, the very next day he writes again.

"Gloucester Hotel, Piccadilly, April 7th, 1814.

"My Lord,

"I am now justified, from your silent contempt and defiance thereof, to make my information public; and which I should not have done before consulting you on that head, my sole wish being to state facts, and not to be considered acting underhand. As I feel exonerated from the last charge, and being in a certain degree called on to give my evidence relative to 21st February last, and as the rank I hold in society will give weight to my testimony, with the witnesses I shall bring forward on the occasion, I feel justified in the steps I am about to take.

"J. Le Marchant."

This attempt at extortion produced the following spirited rejoinder:—

"13 Green Street, April 8th, 1814.

"Sir,

"I should have hoped, circumstanced as I am, and attacked by scoundrels of all descriptions, that a gentleman of your understanding might have discovered some better reason than that of 'silent contempt' to account for the delay of a few hours in answering a note; the more particularly as your note of the 6th led me to conclude that the information offered to me was meant as a mark of civility and attention, and was not a subject in which you felt any personal interest.

"I am, Sir,

"Your obedient Servant,

"Colonel Le Marchant." "Cochrane.

The officious Colonel, upon this, asked pardon for his letter. "I also now declare solemnly, that no power or consideration shall ever induce me to come forward as an evidence against you, and that all I know on the subject shall be buried for ever in oblivion!" He inclosed a statement of what he represented as De Berenger's communication in confidence, and showed the cloven foot.

"De Berenger's conversation would, to your enemies, be positive proof; as for my part, I now consider all that man told me to be diabolically false. If my conduct meets your approbation, can I ask for a reciprocal favour, as a temporary loan, on security being given? I am just appointed to a situation of about 1,200*l.* a year, but for the moment am in the greatest distress, with a large family; you *can* without risk, and have the *means* to relieve us, and I believe the *will* of doing good. Necessity has driven me to ask your Lordship this favour. Whether granted or not, be assured of my keeping my oath, now pledged, of secrecy.—J. LE MARCHANT."

The important part of the statement was to the effect "that De Berenger came to him one evening, having dined, as he said, with Lord Cochrane, and, somewhat elated with drinking, mentioned his prospect of being appointed to the rank of field officer by the Duke of York. On my asking him, if the Duke of York was to appoint him, how he could extricate himself out of his difficulties and leave the Bench? he answered, 'All was settled on that score; that, in consequence of the services he had rendered Lord Cochrane and Mr. C. Johnstone, in devising whereby they had and could realize large sums by means of the funds or stocks; Lord Cochrane was his friend, and had told him a day or two ago, that for those services his Lordship had, unknown to him (De Berenger), kept a private purse for him, placing therein a certain per centage on the profits Lord Cochrane had gained through his stock suggestions, and that now this purse had accumulated to an amount adequate almost to liberate him from the Bench.' When he said this he appeared overjoyed, and said it in such a manner as to make me credit him."

Very respectable witnesses were then called to confirm Lord Cochrane's volunteered statement.

Lord Melville spoke to his recollecting Sir Alexander Cochrane more than once applying to him, that Mr. De Berenger might be allowed to accompany him, and to remain with him on the North American station, for the purpose of instructing, either a corps to be raised in that part of the world, or the Royal Marines in the rifle exercise. "I said I could not agree to the appointment as far as the naval service was concerned, but I advised him to apply to the Secretary of State, or to the Commander in Chief, stating that, if they agreed to it, I should have no objection to let him accompany Sir Alexander. Lord Cochrane was appointed to the Tonnant, about the time Sir Alexander Cochrane sailed."

Colonel Torrens, secretary to the Commander in Chief, stated that there were great difficulties started to this application, and in consequence of those difficulties the appointment did not take place. It was under consideration, however, at the Commander in Chief's office.

The contents of the affidavit were further confirmed by William King, a tinplate worker, who was employed by Lord Cochrane in making signal lanthorns and lamps. "I made him a new sort of lamp for which he had a patent. He came frequently, nearly every day, to my manufactory: he was there the 21st of February. He came between ten and eleven in the morning: that was about the time he usually came. I perfectly recollect the circumstance of a note being brought to him by his servant. I was present when the note was delivered. He immediately opened it and retired into the passage; and he came into the workshop again, and shortly after went away. His Lordship had been about a quarter of an hour there, that is, a mile and a half from Grosvenor Square; his Lordship only said 'Very well, Thomas,' not making any observation expressive of anxiety as to his brother."

Mr. Bowering, clerk in the Adjutant-General's office, proved that Major Cochrane, the brother of Lord Cochrane, was returned as with the army in the south of France "sick" on the 25th of January.

Thomas Dewman, servant to Lord Cochrane and seventeen years in the family, related the particulars of De Berenger's call, and of his taking the note to Mr. King's manufactory. "I remember the gentleman coming to Lord Cochrane's in a hackney coach; I do not know that I have seen him before or since. He first asked where Lord Cochrane was gone to; and I told him he was gone to Cumberland Street to breakfast, because his Lordship told me he was going there to his uncle's. I went there after him; and, not finding him, I returned to the gentleman. His Lordship had told me to follow him with some globe glass to Mr. King's. I told the gentleman that I most likely should find him there. He took the note from me and said, 'I will add two or three more lines.' I took the note to his Lordship at Mr. King's. His Lordship read the note in my presence. I left him at Mr. King's. His Lordship had no man in Green Street but me. Davis, the other servant, is gone with Admiral Fleming to the West Indies."

Mr. Gurney then admitted that Lord Cochrane had a patent for the invention of a lamp, dated the 28th of February, and with this admission closed the evidence for Lord Cochrane.

The evidence for the gallant Lord was free from impeachment. Not so the band of suborned witnesses led by the attorney, Mr. Gabriel Tahourdin. "I have known Mr. De Berenger five or six years. I introduced him to Mr. Cochrane Johnstone in May, 1813. He was in possession of a place at Paddington, named Vittoria, which he was desirous of improving. I introduced De Berenger by mere chance. He afterwards employed himself in preparing a plan, and had nearly completed it, which plan is here [*producing it*].

Lord Ellenborough. The exhibition of the plan cannot be important, I should think.

Mr. Scarlett. It may become material, because Mr. Cochrane Johnstone had paid him for the plan.

Lord Ellenborough. Whether there were colonnades, and so on, or not, I should think, cannot be material.

Mr. Park. The production of the plan is necessary only to show that it is worth the money which was paid.

Lord Ellenborough. I only wish to avoid useless particularity; I do not wish to curtail you of the least particle of proper proof.

Mr. Tahourdin. Shortly before Mr. Cochrane Johnstone went to Scotland in September, he made him one payment on account of it. Besides the plan, De Berenger prepared a prospectus. I spoke several times to Mr. Johnstone upon the subject of paying for those plans; but no price was fixed upon till February last. I made repeated applications to Mr. Johnstone, in a delicate way, to pay him; and, on the 22d of February, Mr. Johnstone sent me a letter inclosing a note from Mr. De Berenger to himself.

These letters, if not genuine correspondence on business written at the time, are composed with great art and subtlety. The following is the important part of their contents: —

"18. Great Cumberland Street, Feb. 22d, 1814.

"My dear Sir,

"I have received the inclosed letter from the Baron; and, as I mean to pay him this week for his plans, pray let me know if you have advanced him any money on my account, in addition to the 50*l.* which I paid him on account last year. You will perceive that he wishes a loan of 200*l.* in addition to this sum, and that he offers me, as security, Colonel Kennedy's assignment. I have told him, that, if this sum can be of real service to him, I will advance it to him. I will take his note for the amount; and, if he is ever able to repay me, well and good; if not, I shall have had the satisfaction of serving him.

"A. C. JOHNSTONE.

"Gabriel Tahourdin, Esq."

"My dear Sir,.

"You have often kindly pressed me to let you know what would satisfy me for the two plans and drawings, connected with them. I really have never made a charge of this kind, and am at a loss how to calculate, much less to make a demand; but those who can perceive the labour, time, difficulties, and contrivances which the awkwardness of the ground created, may better be able to say, if 250*l.* for every thing is unreasonable. At all events it is not a charge; but I leave it to you; and, in case you deem it ex-

travagant, I am ready to submit the whole to the valuation of any competent person. What regards the drawing, planning, and superintending, Donovan, and the brass-cutter, in completing the two pieces of furniture, I am determined not to accept anything; for these you must (forgive a strong word) do me the favour of accepting.

"C. R. De Berenger.

"To the Hon. Cochrane Johnstone."

The answer seemed quite correct, the natural reply of a professional man and friend: —

"My dear Sir,

"In reply to your favour of yesterday, I beg to inform you, that the only sum I have paid the Baron on your account since you advanced him the 50*l.*, is a trifle of about seven or eight pounds, which he paid for the printing of the prospectuses of Vittoria. You are very kind in assisting him so much; I have done it till my purse is empty.

"Gabriel Tahourdin."

Lord Ellenborough interposed. "Where is the cover of this letter? The cover should be produced; for letters of this sort may be written after their date, and one wishes to have some external thing that cannot deceive. There is no post-mark to any of these letters."

Mr. Scarlett. Did you write that letter on the day it bears date?

A. Yes, I did. It was not sent by the post, I believe. I cannot charge my memory whether it was or was not.

The date of the inclosed letter from De Berenger to Mr. Johnstone being indorsed, gave rise to the following colloquy between Mr. Scarlett, the witness, and the Judge.

Mr. Scarlett. With respect to those letters you received from Mr. Johnstone, do they contain your indorsement upon the back of them?

A. I think they do.

Q. Is that your handwriting upon the back of that letter [*showing it to the witness*].

A. It is.

Q. Was it written by you at the time you received it?

A. Yes.

Lord Ellenborough. What letter is that?

A. The letter of the Baron to Mr. Johnstone, of the 22d of February.

Lord Ellenborough. You wrote it on the same day?

A. I cannot say on the same day, but within a few days; when I doubled up the papers that lay on the table with other documents.

Mr. Scarlett. Is it your habit, when you lay letters by, to indorse the date?

A. Yes, uniformly; but not on the day of receiving them. I let them lie till they accumulate unpleasantly.

Lord Ellenborough. If a man sends you letters inclosed from other persons, do you indorse the letters sent to you inclosed; that is no part of the correspondence with you?

A. No, it is not.

Q. Then I should apprehend you would not usually do it?

A. I have done it differently; I have said, "De Berenger to Johnstone."

Q. But you give it a date?

A. I have dated it above those words, as usual.

Q. When you receive a letter, you authenticate the period of receiving it, but not the date of a letter received by another?

A. I generally do. I inclose it in the letter to which it refers.

Mr. Scarlett. Was it so done in this instance?

A. It was.

Lord Ellenborough. Have you any letter-book?

A. I do not keep a letter-book; but I keep my letters very regularly tied up.

Mr. Scarlett. You have heard the contents of the letter from Mr. De Berenger to Mr. Johnstone read?

A. Yes.

Q. That refers to some documents in your hands, to serve as a security to Mr. Johnstone, in case he should require them?

A. Yes.

Q. Is it your usual practice, when letters of that sort are sent to you, to make the sort of indorsement you have done when you lay the letters by?

A. It is.

Lord Ellenborough. I only ask him as to the inclosure. If I received a letter, I should indorse the date of my receiving it, as authenticating the fact; but I should not put the indorsement of the date, whether it was received on that day or not. The gentlemen of the Jury know whether that is the habit of business or not.

A Juryman. Is the date you have indorsed upon the inclosure the date of your receiving it, or the date of the letter?

A. The date of the letter.

Lord Ellenborough. Certainly, it is not regular to authenticate the date of a letter to which you are not privy; that is all my observation upon it.

When commenting on this correspondence, the Chief Justice observed: "I should have thought from two to three hundred pounds very excessive compensation for the plan: but still there was some claim affording a ground for money transactions to pass between them. As to the dates, there is one circumstance of Mr. Tahourdin dating the letter of De Berenger to Cochrane Johnstone, inclosed in the letter of Cochrane Johnstone to himself, which appears not very usual in the course of business. The letters show other transactions between them. Whether they were pretended or not, or, if existing then, artificially brought forward or not, may be a question; but the letters are certainly dated at a most critical time, namely, on the 22d of February. There is a great deal of business, certainly, introduced into these letters, so much, as almost to induce one to think there is an artificial introduction of business, to give the appearance of reality to the letters: however, Mr. Tahourdin certainly swears that there were such transactions at that period."

Upon his examination by Mr. Park, Mr. Tahourdin spoke peremptorily to the Dover letter not being in the handwriting of De Berenger.

Q. Upon the knowledge you have of the handwriting of Mr. De Berenger, is that, in your judgment, the handwriting of Mr. De Berenger or not?

A. Certainly not.

Lord Ellenborough. Be upon your guard.

Mr. Park. Be upon your guard, and look at it attentively. You have many, many times seen and read his letters?

A. A thousand times, and received a thousand letters from him.

Q. And do you not believe it to be his handwriting?

A. I do not indeed; it is not his handwriting.

Lord Ellenborough. That is the Dover letter.

Mr. Park. Yes it is, my Lord. If your Lordship will look at that and the other letter, you will see a marked difference.

[*The witness compared the two letters.*]

Lord Ellenborough. The gentleman may look at the two letters; but that furnishes no argument, for a person would certainly write a disguised hand at that time, if ever he did in his life. This gentleman does not go on belief that it is not, but he swears positively that it is not his handwriting.

Mr. Park. Certainly, my Lord; and there is on the other side only Mr. Lavie — this gentleman having seen Mr. De Berenger write a thousand times, and received a thousand letters from him.

Q. Do you in your judgment and conscience believe that that is a disguised hand of Mr. De Berenger?

A. I do not.

A Juryman. Why did you take the two letters up to compare the two handwritings, if you had no doubt in your mind?

A. I had no doubt at all of it.

Lord Ellenborough. Why did you compare the two then?

A. I wished to be circumspect; but if my life rested upon it, I should say this is not his handwriting, according to my belief and judgment.

Mr. Gurney. I wish to show Mr. Tahourdin the handwriting in that road-book.

Lord Ellenborough. The handwriting in that road-book certainly was as extremely like the Dover letter, as ever I saw any thing in my life. [*The road-book was handed to Mr. Tahourdin.*]

Mr. Gurney. Have the goodness to look at that pencil writing in that road-book; do you believe it to be Mr. De Berenger's handwriting?

Lord Ellenborough. Now be upon your guard.

Mr. Gurney. Look at both pages.

[*The witness examined it.*]

A. Some of it appears to be more like his handwriting than the other part.

Q. Do you not believe it all to be his handwriting?

A. No; I do not indeed.

Q. How much of it do you believe to be his handwriting?

Lord Ellenborough. State the parts where you think the likeness ends, and where you think somebody else has taken up the pencil and written a part of it.

A. That looks more like his handwriting [*pointing it out*], but it is not the general writing of Mr. De Berenger.

Mr. Gurney. How much of it do you believe to be his handwriting?

A. Some part of it looks more like his writing than the other part.

Q. Is there any part which you believe is not?

A. The writing part is not at all like his writing.

I ask you as to nothing but the writing part.

Mr. Gurney. How much is there of it that you do not believe to be his writing?

A. Some of the letters look like his handwriting.

Q. How much or how little of it do you think to be his handwriting?

A. The smaller parts look like his handwriting?

Q. Now I ask you, upon your oath, have you any doubt of the whole of those two pages having been written by the same hand?

A. Upon my word, it is difficult to say.

Q. Not at all so; I have looked at it attentively, and I know it is not difficult to say: do you not believe it all written by the same hand?

[*The witness examined it again.*]

Lord Ellenborough. You can say whether you believe it to be De Berenger's handwriting.

A. Upon my word, I really do not know what to say.

Mr. Gurney. I am quite content with that answer.

Lord Ellenborough. Mr. Park, would you like to look at the Dover letter?

Mr. Park. I am no judge of handwriting, my Lord.

Lord Ellenborough. That may be a concealed handwriting, and I should think it extremely likely.

Mr. Park. I mean to call other witnesses to this; I have nothing to conceal in this case.

Lord Ellenborough. No; you announced to us that you flatly contradict the whole of the story as to Mr. De Berenger?

Mr. Park. Yes, I do, my Lord; I observe this is all pencilling which has been shown to you?

A. Yes, it is.

Mr. Park. Is this pencil writing in the same kind of character that a man writes when he writes with pen and ink? Are you enabled to say, from your knowledge of the handwriting, whether it is or is not?

A. That it is which puzzles me more than any thing, its being in pencil.

A Juryman. We should like to see that road-book.

Mr. Park somewhat incautiously objected: Does your Lordship think the Jury have a right to see that; they cannot take it for the purpose of comparing with any thing else?

Lord Ellenborough. It is in evidence, being found in the desk of the defendant; they may look at each, if they please.

On the part of Mr. De Berenger, Lord Yarmouth was then called. "I am lieutenant-colonel commandant of the regiment of Sharp-shooters. Captain De Berenger was acting adjutant, a non-commissioned officer. I have known him since 1811. I have received letters from him, and have seen him occasionally write." The letter sent to Admiral Foley being shown to him, he said: "If I had heard none of the circumstances, I should not have believed it was his handwriting. He solicited to go out in the month of January last. Some time back he told me, that he had very nearly arranged to go out to drill the men on board the Tonnant." Upon his cross-examination, he was requested to look again at the letter sent from Dover to Admiral Foley, and then said, "The letter *R* looks very much like his handwriting in the *R* of Random, before De Berenger, Random being his second name." Being asked by Lord Ellenborough what he should think of this gentleman coming to him in his bottle-green coat of uniform, he said

he thought "it would have been more military that he should come so, though I never exacted it of him. I should not have been angry at it, but should have thought it the regular dress for him to appear in. If he had appeared before me in an aide-de-camp's scarlet uniform, and with a star, I should have been indeed surprised to see him present himself before me in that dress."

James Stokes, clerk to Mr. Tahourdin, was confident, as to the handwriting, beyond the possibility of doubt, or error, or mistake; and Lord Ellenborough kindly invited him on to display more intrepidity of assertion.

Mr. Park. Be so good as to look at that paper (the Dover letter), and tell his Lordship and the Jury whether, in your judgment and belief, that is the handwriting of Mr. De Berenger.

A. Certainly not.

Q. Look at that, and say whether you think it is a feigned hand, but still the handwriting of De Berenger?

A. It certainly is not.

Q. Of course a man can only speak to belief and judgment, when he does not see a thing written — do you believe, from your knowledge of his handwriting, that that is his writing, either feigned or real?

A. Not a word of it.

Lord Ellenborough. Look at the letter *R* in the signature.

A. It is not like it at all.

Mr. Park. I mean the large *R*.

A. The capital *R* is nothing like it.

Mr. Park. It is a singular *R* certainly; it looks as if it had been intended for a *P* and made into an *R*.

Lord Ellenborough. It is not at all like that *R*, is it? [*showing another letter to the witness*].

A. No, I do not think it is any thing like that.

His testimony was a remarkable confirmation of the rule, "Be bold, be bold, be not too bold."

At length, "with slow, reluctant, timorous delay," the counsel for De Berenger proceeded to call his servants to speak to the false alibi.

William Smith, being shown the Dover letter, was positively

sure that it was not Mr. De Berenger's handwriting, no part of the letter. "I was with him on Sunday, the 27th of February, when he went away. I perfectly remember he was at home on Sunday, the 20th. He slept at home on the Saturday night, the 19th, and went out about nine o'clock on Sunday morning. He came in afterwards at nearly eleven o'clock, and went out again immediately afterwards. He stayed out only about twenty minutes, and returned again, when people were gone to church; and stayed at home till about four o'clock; he then went out again. I was not at home then—I was over the way with my master's dog, leaning with my back against the rail, when he came down on the opposite side of the road facing the door. I heard him pass my room door to go to his bed-room; that might be about half-past eleven."

His cross-examination by Mr. Gurney elicited some curious hard swearing.

Mr. Gurney. He slept at home that night?

A. I cannot say that he *slept;* he went to his bed-room; and the bed, when I went in the morning, looked as if he had slept in it.

Q. Did you not, on Monday, the 21st, tell Mr. or Mrs. Davidson, or both, that coming home, and not finding your master at home, you had left the key for him in the usual place in the area, that he might let himself in?

A. I did not tell them so, upon my oath.

Q. Neither of them?

A. No, neither of them.

Q. Did you ever tell them so?

A. No, not to the best of my knowledge.

Q. When you came home on the Monday, did you see any black coat in the room?

A. I did.

Q. Was that your master's black coat, or a strange black coat?

A. A strange black coat.

Q. That black coat must have fitted your master vastly well?

A. I cannot say, I never saw it on.

Q. You brushed it, did not you?

A. Yes; but not on his back.

Q. You are used to brushing his coats?

A. Of course.

Q. Now, a servant used to brush his master's coat must know the size pretty well. This would be rather a short coat upon him, would it not?

A. No, I do not think it would.

Q. Upon your oath, would it not have been a great deal too long; was it not the coat of a man six feet high?

A. I do not know who owned the coat.

Q. I did not ask you that; but was not that the coat of a gentleman six feet high?

A. I do not know.

Q. You are not competent to say what sized man that would fit?

A. That coat would fit me well; it is rather wide.

Q. You have sworn some affidavits, have you not?

A. I have.

Q. Did you draw them yourself?

A. I did.

Q. Without any assistance?

A. Without any assistance.

Q. Merely for the vindication of your master's character?

A. Yes.

Q. And when you had done it, what did you do with the affidavit?

A. I sent to have it published.

Q. To whom did you send it?

A. I took it to Mr. Cochrane Johnstone. I found my master a very injured gentleman.

Lord Ellenborough. You are sure as that you are existing that your master went up at eleven o'clock, or some time after eleven, on Sunday evening, the 20th of February?

A. So help me God, I am sure he did.

Ann Smith, the wife of this zealous servant, stated that her master came in about eleven o'clock. "He was let in by my husband, and I heard him above stairs. I remember how my master was dressed on the Monday when he came home. He had a black coat on. He had a bundle in his hand. I saw a part of a coat where the bundle was open, a grey coat, just where the knot was tied."

Lord Ellenborough. What did you see besides the grey coat in the bundle?

A. I saw nothing but that.

Lord Ellenborough. Recollect yourself, because you have sworn you saw a green uniform.

A. There might be a green uniform.

Q. Was there, or was there not?

A. Yes, there was a green uniform.

Q. Was it in the bundle or not?

A. Yes, it was in the bundle.

Whenever Mr. Bolland flagged in his cross-examination, Lord Ellenborough came to the rescue.

Lord Ellenborough. Did Mr. De Berenger ever wear whiskers?

A. Yes, sometimes he used.

Q. How long before the 20th of February had you seen him wear whiskers?

A. I do not know; I was so little in the habit of seeing my master that I do not know whether he had whiskers or not.

Q. You saw him come in at the door, did not you?

A. On the Monday morning.

Q. Were you so little acquainted with the countenance of the man in whose service you had lived two years and a half, that you did not know whether he was a whiskered man or an unwhiskered man?

A. I never attended the door when my husband was at home.

Q. You used to go backwards and forwards; just before you did not know whether there was a green coat in the bundle; and then, when I put you in mind of what you had sworn, you say positively there was.

A. Yes, there was.

Q. And now you mean to say, you saw so little of your master, that you do not know whether he had whiskers?

A. No, I do not know!

The ostler at Chelsea, M'Guire, was then called to prove that the Baron was at a late hour in town on that Sunday evening. "It was a quarter past six in the evening that I saw

him at Smith's stable-yard gate. He asked me if the coach to London was gone. When I went home that night, I mentioned to my wife that I had seen Mr. De Berenger at a quarter past six. I was induced to mention it, from knowing he was in the Rules of the Bench."

Mr. Hopper, an architect, being shown the plan and prospectus, said, "From the trouble that must attend it, a compensation of from 200*l.* to 300*l.* might not be excessive."

Lord Ellenborough having cross-examined M'Guire as to naming the fact of meeting De Berenger and the time to his wife,

Mr. Park said,—I will call this woman, and will put a question to her. I had not intended it, conceiving that what he said to his wife could not be evidence.

Lord Ellenborough. You will call her, or not, as you see fit; I do not desire to have more persons called than is necessary.

Mr. Park. I must call her, as your Lordship has asked the question, what he told her.

She corroborated her husband's story.

Witnesses still more hopelessly perjured then ventured into the witness-box.

Henry Tragear, a hat-manufacturer, saw De Berenger at Donithorne's on Sunday, the 20th of February—"I saw him twice that day. I saw him between nine and ten in the morning, and again between eight and nine in the evening. I saw him at Donithorne's house both these times. He might stop about half an hour, more or less."

This falsehood was cleverly exposed by Mr. Gurney.

Q. Was his head powdered?

A. I cannot say. I did not see his hat off.

Q. He staid half an hour with his hat on?

A. He went into the back part of the house.

Q. Do you mean to say he staid half an hour in the house with his hat on?

A. I do not mean to say he stopped the whole time in the house; he went into the garden.

Q. On the 20th of February he went into the garden?

A. Yes.

Lord Ellenborough. Did he stand ankle-deep in the garden, or how?

A. I cannot say, indeed.

Mr. Gurney. Was there not a good deal of snow at that time on the ground?

A. I cannot say, indeed.

Q. At what time was this?

A. Between eight and nine in the evening.

Q. And they took a walk in the garden?

A. Yes; it was in consequence of some alteration they were going to make in the premises.

Q. So that they went at ten o'clock at night to survey this alteration in the premises?

A. No; it was between eight and nine.

Q. This you say was about making alterations in the garden — are they made?

A. No, they are not.

Q. They are waiting till February perhaps to survey this garden again?

A. I do not know, indeed.

A volunteer cross-examination by the Judge after the counsel had done his worst was thus opened.

Lord Ellenborough. Have you ever been bail?

A. Yes.

Q. Have you ever justified in any action?

A. Yes.

Q. Did you ever justify in any other action?

A. Yes, I have.

Q. Were you never bail but twice?

A. I do not recollect that I was.

Lord Ellenborough. You may go away, and let me advise you not to be either a bail or a witness again. If the master had been here with the book, I have no doubt you might have gone much further with him.

Mrs. Tragear was then called, and was expressly contradicted by Mr. Donithorne in her story that Mrs. Donithorne came to mention the circumstance of a gentleman having come to look over the house. "I drew down the sash in the back room, and I saw De Berenger through the window. I

saw him in the garden again in the evening, between nine and ten—I mean between eight and nine. He went to speak with Mr. Donithorne, and they walked backwards into the garden. De Berenger never came into their room."

Mr. Bolland. Was there snow on the ground then?

A. No, it was a wet morning, I think.

Q. Are you sure it was a wet morning?

A. I think it was a wet morning, but I did not take particular notice of the day.

Lord Ellenborough. It had rained a good deal, had it?

A. Yes, it had.

Isaac Donithorne was then asked as to De Berenger calling on the Sunday morning, and flatly contradicted the Tragears, that he went up himself to their bed-room, and desired them to rise and to clear up their room.

Mr. Adolphus. Did you desire them to rise yourself?

A. Yes, there is not a doubt of it; for I went up stairs.

Lord Ellenborough. Will you take upon you, upon your oath, to say, that you went in that bed-room out of which they had come?

A. Yes, twice over.

Q. What is your christian name?

A. Isaac Donithorne.

It then oozed out that Mr. Tahourdin had issued a hundred and thirty-five writs for him in *qui tam* actions, and so ended, in exposure and contempt, this disgraceful tissue of perjury.

The Chief Justice could not refrain from a parting fling at the discomfited imposture. Whom else do you call?

Mr. Park. No more, my Lord.

Lord Ellenborough. Do not you prove where De Berenger dined that day?

Mr. Park. No, I have no means of doing that.

Mr. Gurney, in his reply, dissected the falsehoods, inconsistencies, and defective proofs that chequered the evidence of the several defendants with keen and cutting severity. He begirt himself to his task as to a labour of love, "though it was a duty," he said, "in which it was *impossible to feel pleasure;* for every gentleman must feel degraded in the degradation of a gentleman, and every Englishman must feel mortified in

the disgrace of a man whose name is associated with the naval or military glories of his country. But we are here to try these defendants by their actions; and, whatever their conduct may have been in other respects, by those actions must they stand or fall.

"Gentlemen, if in the outset of this case I addressed you with confidence as to the result, I address you now with confidence increased tenfold, when I recollect the arguments by which these defendants have been defended; when I recollect the evidence which *has* been adduced in their defence, and when I recollect too the evidence which has *not* been adduced in their defence: the first, as it appears to me, totally failing in making out a case of innocence; and the two latter concluding to their guilt."

The tricksy notion of there being two separate and distinct plots was a mere ingenious delusion. "*If there were two conspiracies,* then miracles have not ceased; for unless you can believe that a most extraordinary miracle has occurred, it is quite impossible to conceive that there were two plots. It is not necessary, in a conspiracy, that every party should know every other party in the conspiracy; it is not requisite that he should be acquainted with all the *dramatis personæ,* and the character assigned to each; it is enough if they engage in the general plan to forward the same general end, and each takes the part which is assigned him to the furtherance of that end. Ask M'Rae, whether the plot was one or whether it was two? M'Rae was ready to come forward, and to impeach *all* the parties who were concerned in the conspiracy. Did he not, therefore, know the *whole?* When Mr. Cochrane Johnstone proffered him as a person who should betray the *whole,* and inform against *all* the parties conspiring; are we to be told, that Mr. Cochrane Johnstone thought he knew a *part* only instead of the *whole?* Was Mr. Cochrane Johnstone meditating a second fraud upon the Stock Exchange? Was he endeavouring to get another 10,000*l.* out of them, by tendering them a witness, under pretence of his disclosing the *whole,* when he had it in his power to disclose no more than they already knew?"

Equally unfounded was the reliance on Holloway's state-

ment, that he was not concerned with the Cochranes and Butt. "Mr. Holloway came to propitiate the Stock Exchange Committee; he came to ask them not to prosecute him. He could not have asked for that forbearance, if he had confessed a participation with De Berenger and the Cochranes. The only chance he had, therefore, was to deny his having any part in that plot, which he knew they were most anxious to unravel. Mr. Serjeant Best's explanation of the stock transactions was a plausible fallacy, that, because they had had on a former day a larger balance, they could have no possible inducement to the commission of this crime. Gentlemen, observe the amount of the balance on that day; it was, in omnium and Consols, very nearly a million. Reduced to Consols it amounts to 1,600,000*l*. Then attend to the evidence of Mr. Baily, who tells you that the fluctuation of one-eighth was a gain or loss of two thousand pounds. Though they had been both buying and selling, yet their purchases had been much larger than their sales, and their attempts to purchase larger than their actual purchases. On Saturday the 19th, Mr. Butt had endeavoured to purchase one hundred and fifty thousand, and actually purchased fifty thousand. On this Monday, the 21st, all the three have this immense quantity of stock upon their hands; they have no means of getting rid of it, for Mr. Baily has told you, that but for this fraudulent transaction, it would have been impossible to have got rid of it, but at a great loss. They had been buying as a person must do to keep up the market, to redeem himself from loss; and on this memorable day, all this stock is sold; it is sold at a profit of upwards of ten thousand pounds; and if it had been sold without a profit of one single farthing, still the getting out without a great loss was to them very great gain.

"Recollect, Gentlemen, that just one month afterwards came the news of the rupture of the negotiation at Chatillon, when the premium on omnium fell from 28 to 12 per cent.; if that news had come, instead of this false news, on the morning of the 21st of February, the loss of these three defendants would have been upwards of one hundred and sixty thousand pounds. These persons, therefore, were so involved, that ruin stared them in the face, and when they were in this situation, they

did, as I allege, and as I maintain I have proved by evidence perfectly irresistible, engage in this conspiracy, to give this fraudulent rise to the funds by this false news.

"The corrupt motive was supplied by these stock transactions, the falsehood of the defence proved to demonstration by the identity of De Berenger. Upon this subject we have had, for the last two hours, the evidence which has nauseated every man in court; the evidence of the alibi, which no man living can believe; in which no two witnesses agree; in which we have contradiction after contradiction from every one of them. My learned friend, Mr. Park, last night told us we should have the evidence of two watermen, who had rowed Mr. De Berenger across the Thames, who knew his person perfectly well, and who recollected the occurrence particularly, because it was the first Sunday after the frost had broken, and the river became navigable. I suppose the river is frozen again this morning as they are not here. They who projected this alibi did not attend to one circumstance, which cannot fail to have struck you long ago; namely, that this is a case perfectly unassailable by alibi. I take up De Berenger at Dover as I would a bale of goods—I have delivered him from hand to hand from Dover to London—I have delivered him into the house of Lord Cochrane—and I have Lord Cochrane's receipt acknowledging the delivery. Who went into the house of Lord Cochrane? Ask Lord Cochrane. It was Mr. De Berenger; and it is not pretended that any other person entered that house in that dress, or any thing resembling it; and therefore if I had not any witness to speak to the identity of the countenance of Mr. De Berenger, I have proved such a case as no alibi can shake. But add to that the evidence of identity. I have had much experience in courts of justice, and much upon the subject of identity, and I declare I never in my life knew a case of identity, by the view of countenance, so proved. The countenance of Mr. De Berenger is not a common one; a person who has observed it cannot have forgotten it. If this were not a case of misdemeanor, but a case in which the life of the party were to answer for the crime he had committed, I ask, whether many—many—many guilty men have not forfeited their lives upon infinitely less evidence than I have given as to the person of Mr. De Berenger?

"If he was Colonel Du Bourg, what becomes of the question of handwriting? The evidence of Lord Yarmouth, that the note sent to Admiral Foley does not resemble the Baron's usual writing, becomes immaterial. Even if it were, De Berenger would not write in his usual hand. Lord Yarmouth says the character is more angular than his usual hand. That would be the case, where a man is writing a feigned hand; but still that occurs here, which almost always does occur, a person so writing is very likely to betray himself just as he gets to the end; and when he comes to sign his name, the initials shall be so striking, as at once to excite the observation of such a man as Lord Yarmouth; and his lordship says this R in the signature of R. Du Bourg certainly does very much resemble the R in the usual signature in C. R. De Berenger. My learned friends last night addressed you at great length, and with great earnestness, upon Lord Cochrane's affidavit, and they requested you would not suppose Lord Cochrane was capable of making a false affidavit. Gentlemen, that Lord Cochrane would have been incapable of deliberately engaging in any thing so wicked some time ago, I am sure I as earnestly hope as I am desirous to believe; but you must see in what circumstances men are placed, when they do these things; Lord Cochrane had first found his way to the Stock Exchange, he had dealt largely in these speculations, which my learned friends have so liberally branded with the appellation of *infamous;* he had involved himself so deeply, that there was no way, but by this fraud, of getting out of them; he had then got out of them in this way, and then he found, as guilty people always do, that he was involved still deeper; he found the great agent of the plot traced into his house, and traced into his house in the dress in which he had perpetrated the fraud; he was called upon for an explanation upon the subject. Gentlemen, he was gone to perdition, if he did not do something to extricate himself from his difficulty.

"The only part of that affidavit which, from its importance, wanted confirmation has not been confirmed. After they had called witness after witness to give this confirmation upon this insignificant and trifling point, they leave him without confirmation upon that important, that vital part of this case

to my Lord Cochrane; namely, the dress which Mr. De Berenger wore at the time he came to that house, and had with him that interview. Lord Cochrane puts him on a grey military great coat, a *green* uniform, and a fur cap. I have proved that the uniform he wore was *red*. My learned friend, Mr. Serjeant Best, felt the strength of the evidence for the prosecution upon that, and he endeavoured to answer it by a very strange observation. 'Why,' says he, 'consider Lord Cochrane had been accustomed to see Mr. De Berenger in *green;* he did not make his affidavit till nearly three weeks afterwards; and how very easily he might confound the *green*, in which he ordinarily saw him, with the *red*, in which he saw him on that day, and on that day only.' Now, if I wanted to show how it was impossible for a man to make a mistake as to the colour of the coat in which he had seen another, I should select the instance in which he had seen that other in a peculiar dress but for once.

"But, Gentlemen, my learned friend had to account for more than the red coat. It is not a plain red coat, it is a scarlet military uniform, the uniform of an aide-de-camp; and on the breast there is that star which you have seen; and suspended from his neck there is the medallion. Lord Cochrane is a man of rank, not unacquainted with the distinction of a star. If he was not in the secret of De Berenger's dress, he must have had curiosity upon the subject; and I beg to ask, what is to be said for Lord Cochrane seeing De Berenger in that scarlet uniform, with that star on his breast, and that medallion suspended from his neck, swearing that the uniform was *green*, and that he lent De Berenger a black coat, because he could not wait on Lord Yarmouth in that *green* uniform, which you will recollect was the uniform of Lord Yarmouth's corps, in which Lord Yarmouth has told you, it would have been more military to have waited upon him, than in any other dress? One of Lord Cochrane's servants proves that De Berenger wrote two or three lines more on the note, when it had been brought back from Cumberland Street. Then what becomes of Lord Cochrane's affidavit, who says the signature was so near the bottom of the paper that he could not read it? The postscript is written after the signature;

yet Lord Cochrane cannot read the note, because the signature is written so near the bottom; and then when my learned friends had that servant in the box, they did not venture to ask that servant what was the dress of Mr. De Berenger. After calling witnesses to confirm Lord Cochrane as to applications to different offices by Sir Alexander Cochrane, they dare not ask Lord Cochrane's own servant as to the dress De Berenger wore, to try whether he could confirm Lord Cochrane's affidavit upon that subject. The date, too, of that affidavit at once disposes of all his counsel's ingenious remarks upon Lord Cochrane furnishing the name of the person who practised this fraud. *When* did Lord Cochrane furnish the name of De Berenger to the Committee of the Stock Exchange? *On the 11th of March;* Mr. De Berenger having quitted London on the 27th of February, twelve days before; and when my Lord Cochrane had no more doubt that he was out of the country, than that he was himself in existence; he was gone to the north, not gone to the south, to Portsmouth, to go on board the Tonnant; he had been gone twelve days, twice as long as was necessary to find his way to Amsterdam; it was believed he was safe there; and when it was thought he was quite safe, Lord Cochrane was extremely ready to furnish the Stock Exchange Committee with the name of the party, and so to get credit for his candour.

"How do they account for the bank notes found in De Berenger's letter-case? By a notable expedient, the fruit of Mr. Cochrane Johnstone's fertile brain, drawings forsooth for improving an acre of ground worth 200*l.* or 300*l.* Architects have most magnificent ideas of plans and money! But oh, Gentlemen, when does this fit of money-paying and money-taking seize these two persons? *On the 22nd of February!* The day speaks volumes. Why, for the purpose of this payment and this loan, do they go through this operation of changing and changing again, to procure a vast number of notes for Mr. De Berenger, to enable him to take this long journey to the north? Why, Gentlemen, it is because one-pound notes are not traced so easily as notes for one hundred pounds; people take these small notes without writing upon

them, but they do write upon such large notes as 100*l.* and 200*l.*, and that they knew might afford means of immediate detection. Recollect too, Gentlemen, that this 400*l.*, which is shown to come out of the hands of Mr. Cochrane Johnstone and Mr. Butt, after the 24th of February, is also shown to have come originally out of the hands of Lord Cochrane himself on a prior day; and therefore you have the money coming out of the hands of all the three; the reward of the agent coming out of the hands of the persons who had been benefited by the fraudulent services of that agent."

Mr. Gurney concluded his pointed observations with a confident expectation of the result, which he might well collect from the countenances of the jury, indignant at the false and feeble attempt at *alibi* that had been set up. "It appears to me absolutely impossible to doubt respecting the guilt of the several defendants. De Berenger is Du Bourg. When De Berenger is Du Bourg, the rest all follows; he was the agent of others, unquestionably; he was not himself the principal. You have had a mass of perjury exhibited to-day to extricate him, and consequently his employers. That, like all falsehoods, when detected, only serves to make conviction more clear and more certain. With these observations I sit down, feeling most grateful for the patient attention I have received, both from his Lordship and from you, and perfectly sure that you will do justice to the public."

It would have told more to the candour of the prosecuting counsel, had he discriminated with greater accuracy the shades of proof and guilt between the different defendants, and not caught them all alike in one common drag-net. But he spoke for a conviction; and his zeal was abundantly seconded by Lord Ellenborough, who inferred the guilt of one and all with indignant terseness and emphatic scorn. His little finger was thicker than the counsel's loins; the one had chastised the accused with whips, but he chastised them with scorpions. In that weighty, Latinised, English, which so peculiarly stamped his judgments, the Chief Justice defined the offence of conspiracy as "an offence consisting in a wicked concert, contrivance, and combination of individuals, to effect some public or private injury or mischief; that contrivance and that combination is not to be collected, nor is it prac-

ticable, in the course of human affairs, to collect it from the mouths of the parties assembled for the purpose of communication, but from the actings and conduct of the several parties as they may appear generally, to conspire and conduce to the same wicked end and purpose; and if it appears to you, from the actings and conduct of these parties, that they entertained the same common purpose of mischief, and that they have by their several actings combined and co-operated to the effecting that same wicked purpose, that is sufficient to bring home the imputation of the crime charged against the parties; therefore the prosecutor need not show that they have met in common council, or even that they have seen one another before, if their acting shows they were influenced by one common purpose of mischief, and aimed at the production of the same malignant end and effect. Suppose persons, jointly charged in an indictment with the breaking of a house, are found on different sides of the same house, besetting and endeavouring to enter it at the same time; you need not show that they had actually met, and previously contrived the plan of this joint robbery; the unity of their conduct proves their joint contrivance and concert to accomplish the same end: if they all co-operated to the same end, and the Northfleet imposition was intended to be auxiliary to the imposition intended to be effected by the way of Dover, and the parties knew that they were acting in the same fraud, and were respectively conscious instruments in producing the same effect, they are all guilty of the same conspiracy. It will be one material point for your consideration, whether, under the circumstances which have appeared in evidence, it is made out to your satisfaction, that they were all conspiring to effectuate the same purpose, pursuing similar, and, with almost a servile imitation and resemblance, the same means, at the same time, in the accomplishment of the same end.

"Now how has it been done? In both instances, by the adoption of disguises. There was in each case the assumption of the character of officers; and the communication of false intelligence respecting the good news which was to accelerate peace was common to both parts of the scheme. You will consider, upon the whole of the evidence, whether there is not

a link or connection between the upper and under plot. By a most remarkable offer on the part of Mr. Cochrane Johnstone, it was proposed that 10,000*l.* should be given to M'Rae, a man in a low and desperate situation; and Lord Cochrane and Mr. Butt were each to contribute 1000*l.* Why should they give that? If, indeed, they could thereby mislead and draw away the public attention, and divert it to the pursuit and hunting down of M'Rae, as the sole artificer and perpetrator of the fraud, and could thereby turn aside observation and suspicion from themselves (supposing them to be properly charged with this offence), 3000*l.* would be well paid, and cheaply employed for such a purpose. It is for you to say whether these letters which have been read to you do not appear pregnant of this contrivance and device on the part of the writer."

On the part of the writer they certainly did, but not on the part of his nephew, whose name might be used without authority. The first question proposed by Lord Ellenborough, was the man found at Dover De Berenger? and was the Dover letter his handwriting? could receive but one answer. He characterised the letter as evidently an artificial, upright, stiff hand; that the words presented a more angular formation of letters than he had generally seen.

"With reference to the idea thrown out of this being written in great haste, it is not impossible that this gentleman, having meditated the whole contrivance beforehand, should have brought this letter down with him, ready written and directed from town, and that he had called for pen and ink merely to go through the appearance of writing a letter, and which he might fold up, as if for the purpose of being sent; but that he might hand over to Wright, of Dover, the letter he had brought with him, not trusting to the hurry of the moment for the proper formation of one. I do not say that such is the fact; but it is clear that the letter produced is the one he actually sent; for he says to the witness Shilling, that he had sent a letter to Admiral Foley, in order to apprize him that the telegraph might work. You will not, I think, have any doubt that De Berenger was the man who appeared under the name of Du Bourg; but in order to obviate

or remove that impression from your minds, the learned counsel for the defendant, De Berenger, did adventure, or rather was forced upon, an attempt, which I own it seemed to me to require the utmost firmness to attempt to execute; for there never was evidence given since I have been present in a court of justice, which carried to my mind such entire conviction of the truth and authenticity of that part of the story. You were yourselves witnesses to the manner in which the witnesses who spoke to the person of De Berenger were put upon the investigation; they were told to look round the court, and they accordingly threw their eyes about the court in every direction, before they found the person whom they said they had so taken notice of; you saw them look behind them, look down, and on every side of them, and then suddenly, as if they were struck by a sort of electricity, conviction flashed upon their minds the instant their eyes glanced upon him; this occurred in every instance I think but one, where the witness, not having his eyes conducted that way, did not discover him. So multiplied a quantity of testimony, so clear, and so consistent, was, I think, hardly ever presented in the course of any criminal trial; differing in no circumstance respecting his person and dress, excepting in some trifles, which amidst the general accordance of all material circumstances, rather confirmed by this minute diversity, than weakened, the general credit of the whole, and gave it the advantage which belongs to an artless and unartificial tale; and indeed, Gentlemen, so abundant, so uniform, and so powerful is the evidence as to one point, viz. the identity of Berenger, that it strikes me, that if these witnesses are not to be fully believed as to this point, then almost every man who has been convicted at the Old Bailey upon so much weaker proof of his being the person who committed the particular crime with which he is charged, (and which has been the case in almost *every instance* I have known), may be considered as victims unjustly sacrificed, in a course of trial, to the rash credulity of their judges and juries. If the evidence produced is not sufficient to establish this point, I am at a loss to say by what description and quantity of testimony such a point can be satisfactorily made out in a course of trial."

The Chief Justice had believed that the *alibi* would have been attempted by more respectable evidence, and alluded with no slight self-complacency to his own detection of one witness, who filled the office of hired bail, the disgrace of our courts of justice. Another, Donithorne, had been employed by Mr. Cochrane Johnstone to bring a great number of penal actions for him: "at every turn of the case he doubles in upon us." After recapitulating the evidence with terse, trenchant remarks, all tending to fasten guilt on the defendants, landing De Berenger at Lord Cochrane's, and discovering the fragments of the dress, the Chief Justice said significantly to the jury, "You have before had the animal hunted home, and now you have his skin cut to pieces;" adding, "The account that is given of this man's pulling off his dress, as contained in the affidavit of Lord Cochrane, is highly deserving of your attention. It is a rule of law, when evidence is given of what a party has said or sworn, all of it is evidence (subject to your consideration, however, as to its truth), coming, as it does, in one entire form before you; but you may still judge to what parts of this whole you can give your credit; and also, whether that part, which appears to confirm and fix the charge, does not outweigh that which contains the exculpation."

He read the affidavit at length, till he came to that part of it which mentioned "the few lines on a small bit of paper" (De Berenger's note); "the name affixed, from being written close to the bottom, I could not read;" and remarked, "That was certainly a very pointed observation which was lately addressed to you by the learned counsel for the prosecution, that the name which he says he could not read, would not in all probability have been written at the bottom, for he had finished the note once, and when it was sent back to him there was space enough still left for him to write something more. With respect to his hastening home, being anxious for his brother—certainly, his anxiety about his brother, if true, was a very good motive for his returning, but I addressed some questions to the witness on this subject. I thought it very likely, if that was the motive which induced Lord Cochrane to return, that he should have disclosed that motive to the person who brought the note,

especially as he was a servant who had been seventeen years in the family. Nothing could be more natural than to say, 'Thomas, I hope there is no bad news from my brother, your old master.' No such thing passes, but 'Well, Thomas, I will return,' is all that he says to him; he does not mention any thing about any apprehension as to his brother. His brother, as appears by the returns which have come home, had been wounded, or was upon the sick list; but it does not appear that he had then actually received any communication upon that subject; and which, if he had received any such, might have been expected to be proved, and might easily have been so. That his brother was in fact upon the sick list appears, but not that he then knew him to be so; nor did he intimate to the servant that came one word of apprehension about his brother, or any mention of his health or of him, but came back immediately on receiving this note. Now, with the acquaintance he had with De Berenger, no doubt such application had been made to get him appointed as is proved; and he must have been, one would suppose, familiar with his handwriting; and *if so* he could have had no doubt who was the person from whom he received this note, and whom he was to meet when he should get home."

But the virus of Lord Ellenborough's vituperative criticism was poured forth on that portion of the unlucky affidavit which related to Captain Berenger's statement, that he could not go to Lord Yarmouth in this dress, and to the subsequent change of dress. "What is the dress that Lord Cochrane represents as then belonging to him? a green dress? had he a green dress? he must have had that dress with him, whatever it was, in which he had come in the coach. He says that would excite suspicion. Why, if he had really a green uniform, that would not have excited observation or suspicion; it was the very uniform he ought to have worn: but if it was that in which he had got out of the coach, and it does not appear that he had any means of shifting himself; if he had on an aide-de-camp's uniform with a star, and so presented himself to Lord Cochrane, how could Lord Cochrane reconcile it to the duties he owed to society, and to Government, and to his character as a gentleman and an officer, to give him the means

of exchanging it; it must be put on for some dishonest purpose. This red coat and star, and all this equipment, must have appeared most extraordinary, and must have struck Lord Cochrane most forcibly, if he was not aware of the purpose for which it was used; still more strange and suspicious, the offer of a black coat and the letting him put his uniform in a towel. If he put that uniform in a towel, he must have pulled it off his back, for it was on his back before, and then Lord Cochrane, one would think, must have seen him do it. What business had this man with a red aide-de-camp's uniform? He had no business to wear any such garb; he was almost as much out of his proper character, as I should be if I appeared habited in the particular dress and professional habits of an officer or a clergyman. But it does not rest there, for he himself lends to this person the immediate means of his concealment, he lets him have a hat instead of his *laced cap;* and what had such a cap to do with a sharpshooter's uniform? Upon seeing him appear habited as all the witnesses represent him to have been in his way from Dover to Green-Street, Grosvenor-square, would not any one who had known him before have immediately exclaimed, Where have you been, and what mischief have you been doing in this masquerade dress? It is for you, Gentlemen, to say whether it is possible he should not know, that a man coming so disguised and so habited, if he appeared before him so habited, came upon some dishonest errand, and whether it is to be conceived a person should so present himself to a person who did not know what that dishonest errand was, and that it was the very dishonest errand upon which he had been so recently engaged, and which he is found to be executing in the spreading of false intelligence, for the purpose of elevating the funds. If he actually appeared to Lord Cochrane stripped of his great coat, and with that red coat and aide-de-camp's uniform, star and order, which have been represented to you, he appeared before him rather in the habit of a mountebank than in his proper uniform of a sharpshooter.

"Captain De Berenger he swears wore a grey coat, a green uniform, and a military cap; now did he wear a green uniform? They are at issue upon the dress then worn by him;

if he had not this dress on, what other had he? And if he had the green one on, what true or probable reason existed for the change of that? The unfitness of appearing in it before his commanding officer, Lord Yarmouth, is negatived by Lord Yarmouth himself. Supposing him to have appeared in any disguise, it is the conduct of an accomplice to assist him in getting rid of his disguise: to let a man pull off at his house the dress in which (if all these witnesses do not tell you falsely) he had been committing this offence, and which had been worn down to the moment of his entering the house, namely, the star, a red coat and appendant order of masonry, seems wholly inconsistent with the conduct of an innocent and honest man; for if he appeared in such a habit, he must have appeared, to any rational person, fully blazoned in the costume of that or of some other crime, which was to be effected under an assumed dress, and by means of fraud and imposition. This circumstance is therefore very important for your consideration; the judgment to be formed upon it must rest with you, and you will no doubt consider whether, supposing him to have appeared before Lord Cochrane, dressed as the witnesses represent him to have antecedently been, the circumstance of his so appearing in a dress proper for the commission of such a fraud, as appears to have been committed on that day, by attracting a false belief of the person being a messenger bringing great public news, coupled with the fact of his afterwards walking off with that dress in a bundle, instead of having that dress upon his back, and also with the evidence given in order to prove a connection with the notes afterwards found in De Berenger's desk, you are not satisfied that he was privy to and assisted in the scheme of effecting a deception upon the public."

After this energetic condemnation, which scarcely left open to the jury the question of acquitting Lord Cochrane (upon hearing which Mr. Brougham despatched a hasty note to his noble client that he must prepare for the worst), Lord Ellenborough proceeded with his reading of the evidence, making but few and curt comments on the perjured witnesses called by De Berenger, "for this sufficient reason, one cannot

comment upon that which one cannot read and believe." He thus concluded his most forcible charge:—

"Gentlemen, this is the whole of the evidence on each side. I have made my observations upon it as it has proceeded. You have heard from me already, that this is a case in which both the individuals and the public are deeply concerned. It is important that public justice should be vindicated by the conviction of the defendants, if they are guilty; and that justice should likewise be done to the defendants, by exempting them from punishment, if they have committed no crime. You will consider upon the whole of the evidence, whether these several parties were connected in one common plan, and were using their several endeavours and means to raise the funds for corrupt advantage, by false contrivances, and the circulation of false intelligence. If you believe that all of them were concerned in it, you will find them all guilty; if you believe that any of them are exempt from a share in this conspiracy, you will acquit them.—You will now consider of your verdict."

Mr. Richardson. Your Lordship stated that there were some counts upon which they ought not to be found guilty.

Lord Ellenborough. Yes; Gentlemen, you will find the defendants not guilty upon the first and second counts of the indictment, as those allege facts and motives in which they cannot all be supposed to be joined.

A Juryman. They are guilty or not guilty of a conspiracy.

Lord Ellenborough. Yes; a conspiracy, which is a crime that cannot be committed by one; it must be committed by more than one.

The Jury retired at ten minutes after six o'clock, and returned at twenty minutes before nine with their Verdict, finding all the Defendants — GUILTY.

On the following Tuesday, June 14, 1814, Lord Cochrane appeared in person in the Court of King's Bench, scarcely recovered from the dreadful shock, but determined to demand himself a revision of the proceedings that had terminated in his ruin. He was soon interrupted, however, by the application of a rule of court, which had been acted upon that very

morning, calculated to prevent inconvenience, but which might sometimes work injustice, that a new trial could not be moved for, unless all the defendants appeared in court. Mr. Cochrane Johnstone had fled for it, and was not likely to revisit England. At the close of some sharp altercations, provoked by the natural pertinacity of Lord Cochrane to obtain, and the determination of the Chief Justice to do, equal justice, he announced peremptorily "that the Court could not give way to clamour or importunity; that no application could be heard for a new trial unless all the persons convicted were there. There could not be one rule for the poor, and another for the rich."

On June 20th, Serjeant Best moved in arrest of judgment, but upon his declaring that he appeared only as counsel for Mr. Butt, Lord Ellenborough interposed.

Lord Ellenborough. I have made a minute, that on the trial you told me you were counsel for the second, third, and fourth defendants, Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt.

Mr. Serjeant Best. I am not now counsel for Lord Cochrane, I am moving merely for Mr. Butt.

Lord Ellenborough. That is a new proceeding, that counsel shall renounce some clients in order to serve others.

Mr. Serjeant Best. My Lord, Lord Cochrane has desired me not to move on his behalf; and I may state so much for him, that he has no intention to move in arrest of judgment. My other client, Mr. Cochrane Johnstone, is not here.

Lord Ellenborough. If you move in arrest of judgment for one, all have the benefit of it.

The sarcastic remark of Lord Ellenborough was true undoubtedly as to the effect of the motion, but scarcely did justice to Lord Cochrane's principle of honour in abstaining from all technical objections. Those urged by the learned Serjeant were three: first, taking the third count as it stood (and the objections applied to every successive count in the indictment), that there was no body of crime alleged, no offence known to the law, the raising the price of the public funds not being necessarily a crime; in the second place, that if there were any crime alleged, the persons who were

to be affected by that crime were not particularised; his third objection was, that it was stated, that the object of the conspiracy was, to raise the price of the public funds of *this kingdom*, this kingdom being now the United Kingdom of Great Britain and Ireland; "he conceived there was no kingdom of England, but that the kingdom of England was merged in the United Kingdom of Great Britain and Ireland." The indictment alleged, however, that the price of the funds was to be raised by *false* reports and rumours; and these subtle objections to the validity of the indictment, though ably urged, were clearly refuted in the following short and masterly judgment of Lord Ellenborough:—

"I am perfectly clear there is no ground for the motion in arrest of judgment, and that a public mischief is stated as being the object of this conspiracy. The conspiracy is, by false rumours to raise the price of the public funds and securities; that crime is committed in the act of conspiracy, concert, and combination to effect the purpose, and the offence would have been completed even if it had not been pursued to its consequences, or from circumstances the conspirators had not been able to effect it. And the purpose is in its nature mischievous; it is one which strikes at the value of a vendable article in the market, and if it gives a fictitious value, by means of false rumours, it is a fraud on all who may by possibility have to do with that article; it is a fraud on all the public who may have to do with the funds on the day to which the conspiracy applies.

"It seems to me quite unnecessary to specify the persons who became purchasers of stock; for, without the gift of prophecy, how could the defendants know who would be purchasers on a succeeding day? The impossibility is the excuse; besides, if it were possible, the multitude is an excuse in point of law. But such a statement is wholly unnecessary, the conspiracy being complete independently of any persons becoming purchasers.

"The funds could not be correctly called otherwise; they were funds of the kingdom in a large sense. The Irish funds may be distinctly arranged; but still they are a part of one whole, a part of the stock and revenues of the kingdom, that is, the United Kingdom."

Lord Cochrane then read an address to the Court, which had been committed to writing, lest he should be overpowered by his feelings, and which forcibly arrested public attention, far more than the previous efforts of his counsel. "It has been my very great misfortune to be apparently implicated in the guilt of others with whom I never had any connection, except in transactions, so far as I was apprised of them, entirely blameless. I had met Mr. De Berenger in public company, but was on no terms of intimacy with him. With Mr. Cochrane Johnstone I had the intercourse natural between such near relatives. Mr. Butt had voluntarily offered, without any reward, to carry on stock transactions, in which thousands as well as myself were engaged, in the face of day, without the smallest imputation of any thing incorrect. The other four defendants were wholly unknown to me, nor have I ever, directly or indirectly, held any communication with them. Of Mr. De Berenger's concern in the fraud, I have no information, except such as arises out of the late trial. With regard to Mr. Johnstone and Mr. Butt, I am willing to hope that they are guiltless. They repeatedly protested to me their innocence. They did not dare to communicate any such plan to me, if such was projected by them, or either of them. Be they guilty, then, or be they, one or both, erroneously convicted, I have only to lament, that, without the most remote suspicion of their proceedings, if they, or either of them, were concerned in the fraud, I have, through my blameless intercourse with them, been subjected to imputations which might with equal justice have been cast upon any man who now hears me. Circumstanced as I am, I must keep myself wholly unconnected with those, whose innocence cannot be so clear to me as my own. Well had it been for me if I had made this distinction sooner.

"I do not stand here to commend myself—unhappily, I must seek only for exculpation; but I cannot exist under the load of dishonour which even an unjust judgment has flung upon me. My life has been too often in jeopardy to make me think much about it; but my honour was never yet breathed upon; and I now hold my existence only in the

determination to remove an imputation, as groundless as it is intolerable."

In support of his averments Lord Cochrane tendered his own affidavit sworn in open court, that he might be amenable to the law of perjury if he had sworn falsely, and the affidavits of three persons who saw De Berenger in his house, and who confirmed his statement as to the colour of the dress. He re-affirmed the truth of his written assertions to the most minute particular, and rebutted with much force and feeling the calumniating cavils to which they had been exposed.

"It has been said that there was a suspicious degree of familiarity in De Berenger's treatment of me and my house. I can only observe that over his conduct I had no control. But he knew, it seems, of my change of abode, which had occurred within a few days. I trust it will be recollected, that he is proved to have left town three days after such change, and that though not intimate with me, he had the means of knowing where I resided, even if he should not have inquired at my former lodgings, where my address was left. Indeed, if taking refuge in my ship, in order to facilitate his escape, was part of his scheme, it was very likely that he would have ascertained the precise place of my abode previous to his quitting London. Again, I am said to have left the tinman's (where I think I should hardly have gone had I expected such a messenger) as soon as I heard of the officer's arrival. I was in apprehension of fatal news respecting my brother then in France, from whom I had received a letter but three days before, with the intelligence of his being dangerously ill; and I now tender you his affidavit, with the surgeon's certificate, dated the 12th of February, which he brought home with him.

"Comments have been made on my saying so little to the servant who brought that note; but the fact is, I did ask him several questions, as appears by his affidavit. That I did not learn the name of the writer from the note itself, I have truly accounted for, by its being written so close to the bottom of the paper that I could not read it. This assertion is said to be contradicted by the circumstance of the writer

having found room to add a postscript, as if there was only one side to the paper. Of the postscript I have no recollection, but it might have been written even opposite the signature. That I did not collect from the handwriting that it was addressed to me by De Berenger, is nothing extraordinary; my acquaintance with that person was extremely slight; and till that day I had never received more than one or two notes from him, which related to a drawing of a lamp.

"If De Berenger had really been my agent in this nefarious transaction, how I should have acted or where I should have chosen to receive him, it is impossible for me to say: but I humbly apprehend that my own house was not the place I should have selected for that purpose. The pretended Du Bourg, if I had chosen him for my instrument, instead of his making me his convenience, should have terminated his expedition and have found a change of dress elsewhere. He should not have come immediately and in open day to my house. I should not so rashly have invited detection and its concomitant, ruin."

"If I really had been connected with the pretended Du Bourg, I would not have been so extravagant, so Quixotic, as voluntarily to expose the name and change of dress—to divulge a circumstance, which of all others it was the most easy to conceal, and if disclosed, the most certain to excite suspicion.

"My adversaries dwell upon some particulars of this affidavit, which they pretend to find contradicted in the evidence. The principal one is my assertion that Berenger wore a green coat. I have repeated this assertion upon oath, under all the risks of the law; and I also solemnly affirm, upon my honour, which I regard as an obligation no less sacred, that I only saw him in that dress. The witnesses on the part of the prosecution have asserted that he wore a red coat when he arrived in town. Granted. But may he not have changed it in the coach, on his way to Green-street? Where was the difficulty, and for what purpose was the portmanteau? My own fixed opinion is, that he changed his dress in the coach, because I

believe that he dared not run the risk of appearing in my presence till he had so changed it. I tender affidavits of those who saw him, as I did, in his green coat, at my house. That he should have changed his dress before I saw him is most natural, upon the supposition of his wishing to conceal from me the work he had been about; but it is, like many other confirmations of my innocence, fated to excite no attention in the minds of those who only seek food for their suspicions. Much is said of the star and other ornaments, as if any proof had been given of his wearing them in my presence. He took especial care, I doubt not, to lay them aside on his way, when he had divested himself of his official capacity, long before I saw him. The small portmanteau before mentioned, which it is admitted he brought with him, in all probability furnished him with the green coat, and received the red coat and its ornaments, and very possibly for this reason no remark has been made upon it. He presented himself to me in a grey great coat, and a green under coat; and if the persons whose affidavits I now tender had been examined on the trial, and they did attend for that purpose, I do feel persuaded that a very different impression would have been made on the jury and the world at large, than that which they appear to entertain; and that your Lordships might have been disposed to take an opposite view of the case as it affected me. Those witnesses would have corroborated the particulars of my affidavit, relative to De Berenger's dress, when I first saw him at my house, namely, a grey great coat, and a green under coat and jacket. Unfortunately, through some mistake or misconception, not on my part, they were left unnoticed, and, of course, were not examined.

"With regard to the notes found in De Berenger's possession, which had been changed for others that had once been in mine, it amounts to nothing more than that which may happen to any man who has money transactions. Mr. Butt voluntarily made purchases and sales of stock for me, and having received a small loan of money from him, I repaid him with bank-notes which he used for his own purposes. He says that he exchanged these notes, and that a part of the notes which he received in exchange he paid to Mr. Cochrane Johnstone, who

states, that he gave them to Berenger in payment of some drawings; but with this story, whether true or false, I have no manner of concern, and consequently no wish to discuss it. In what way soever the notes which were received in exchange for mine reached De Berenger, I can only say, that mine were given to Mr. Butt in discharge of a *bonâ fide* debt; and I have no knowledge whatever of the uses to which he applied them."

The convicted defendant concluded his pathetic appeal with the high-minded sanguine belief that justice would be rendered to his character sooner or later. "I am not unused to injury; of late I have known persecution; the indignity of compassion I am not yet able to bear. To escape what is vulgarly called punishment, would have been an easy thing; but I must have belied my feelings by acting as if I were conscious of dishonour. There are ways even of removing beyond the reach of ignominy, but I cannot feel disgraced while I know that I am guiltless. Under the influence of this sentiment, I persist in the defence of my character. I have often been in situations where I had an opportunity of showing it. This is the first time, thank God! that I was ever called upon to defend it."

His affidavit was then read, embodying the contents of the former, and ending with an important allegation: "And this deponent further saith, that he was in no degree intimate with the said De Berenger; that he had no personal knowledge of his private or public character; that he never asked the said De Berenger to his house, nor did he ever breakfast or dine with this deponent therein on any occasion whatsoever; and further, this deponent saith, that he hath been informed, and verily believes, that the jury who tried the said indictment, and the counsel for the defence, were so completely exhausted and worn out by extreme fatigue, owing to the Court having continued the trial without intermission for many hours beyond the time when nature is capable of sustaining herself without reflection and repose, that justice could not be done to this deponent."

To the reading of his brother's affidavit, the Hon. W. Erskine Cochrane, Major in the 15th regiment of Dragoons,

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no objection was or could be made, and it proved his dangerous illness in the south of France from Jan. 1st to Feb. 18th. It stated, "that early in February last he wrote to his brother, Lord Cochrane, to acquaint his Lordship with this deponent's situation, as deponent had then very little hope of recovery, and telling him that he had received a notification that he would be ordered to England, where he should proceed, if ever able to undertake the journey."

The objections that were immediately raised to the sufficiency of this affidavit, appear to have been conceived in a captious spirit, glancing obliquely at the credit due to the defendant, and catching eagerly at topics of suspicion.

Lord Ellenborough. This affidavit is not even material to show that Lord Cochrane was in possession of his brother's letter previous to the morning of the 21st of February, so as to account for a connection existing in his mind between the note he on that morning received, and the state of his brother's health, which should induce him immediately on the receipt of it to return home?

Lord Cochrane. I was not present at the trial, or those witnesses would have been examined.

Lord Ellenborough. But those witnesses would not have gone to this point, and your mind must have been drawn to it at the time you made your affidavit, when you came to mention your brother's illness?

Lord Cochrane. My brother's affidavit states, that he wrote to me early in the month, and I received his letter on the Friday previous to the fraud.

Lord Ellenborough. That was capable of being most distinctly verified.

Mr. Justice Bayley. The original letter is not annexed to the affidavit?

Lord Cochrane. It is not; I had no idea of bringing the letter of my brother before a court of justice.

The further affidavits of the servants who had been, or might have been, called as witnesses were most properly rejected. As soon as the officer of the court began to read —"Thomas Dewman, servant to Lord Cochrane, maketh oath and saith——"

Lord Ellenborough interposed. This was a person called as witness on the trial; if the affidavit goes beyond what he then stated, or in contradiction to what he stated, it cannot be received.

Lord Cochrane. Would your Lordship permit me to explain the reason why he was not interrogated?

Mr. Justice Bayley. It is a settled rule, not to allow the affidavits of persons who might have been called upon the trial, much less of persons who were called.

Lord Ellenborough. And if any were not called, they were not called under the discretion of your Lordship. It would be a very dangerous thing, if persons whose evidence may have been discreetly kept back, should afterwards be admitted to come forward as witnesses.

Notwithstanding the strong assertion of Mr. Gurney, when he spoke in aggravation of punishment, that "if all the servants in the house had been called to swear that the colour of De Berenger's coat was green, no man alive could have believed them," the belief grew and strengthened until a general assurance in his innocence at length rescued the unhappy Lord from the effects of an unexampled sentence, involving civil death, torture, and infamy. In a tone of voice as rigid, and with comments as harsh as the sentence itself was severe beyond precedent, Mr. Justice Le Blanc pronounced judgment: that Lord Cochrane and Richard Gathorne Butt should pay to the King a fine of 1000*l.* each, be imprisoned in the Marshalsea twelve calendar months, and be set once on the pillory opposite the Royal Exchange for one hour. John Peter Holloway was also sentenced to pay a fine of 500*l.*, and, together with Ralph Sandom and Peter Lyle, to be imprisoned for twelve calendar months. The conviction being for a conspiracy at common law, the additional punishment of hard labour could not be imposed.

REMARKS ON LORD COCHRANE'S TRIAL.

We must be permitted some more last words, before concluding our notice of the trial, in corroboration of Lord Cochrane's innocence. Our

impartial though condensed report would be incomplete were we not to introduce some extracts from his keen commentary on the summing up of Lord Ellenborough, together with his bitter strictures on Mr. Gurney and Sir Simon Le Blanc in his letter to the Chief Justice. Could he have spoken with equal readiness, a defence by his own mouth, and not by counsel, would have been the most safe and certain method of insuring his deliverance. His pen was as sharp as his sword, though, unlike that modern invention, the Plantagenet razor, it might occasionally wound the user. "The identity of De Berenger was undoubtedly satisfactorily proved; but when one of the witnesses was asked whether he had not previously described the person as one that had a great red nose and a blotched face, De Berenger's countenance being pale, and free from blotches, it was, I apprehend, no part of your Lordship's duty to exclaim, 'Red or not! sure you are of the identity of the face!' If my counsel had duly cross-examined certain witnesses on the subject of De Berenger's dress, it would possibly have been found full as necessary to exclaim, 'Red or green! sure you are of the identity of the coat!' Your Lordship spoke with great self-complacency of having discovered by certain questions that the witness, Donithorne, had been bail, not being a housekeeper. The witness had stated, and was not contradicted, that he had been a housekeeper down to the 17th of February, and there was not any proof that he had acted as bail subsequently to that period." "De Berenger must have changed his dress in the post-chaise which conveyed him from Dartford to the Marsh Gate. If my counsel, or your Lordship in their default, had thought proper to question the post-boy when he saw De Berenger's scarlet coat, it would have appeared that he did not observe it at the time of his quitting the post-chaise. The description of the portmanteau, 'big enough to wrap a coat in,' was omitted in your summing up. It may be said that there are few portmanteaus that are not 'big enough for that purpose,' but still it was a circumstance which your Lordship ought not to have omitted, because it had a tendency to bring home to the minds of the jury the probability of De Berenger having possessed the means of changing his coat.

"The Solicitor-General said, in the debate in the House of Commons on my expulsion, that De Berenger, who had never been supposed to be a fool, must have known that Lord Cochrane was one of the participators in the fraud, otherwise the house of Lord Cochrane would have been the last to which he would have gone. To me it appears that the house of an accomplice was the last to which any body but a fool, in De Berenger's situation, would have gone, because any body but a fool must have foreseen that wherever he should in the first instance proceed, after exciting so much attention and curiosity, and after a transaction which would so soon be known to have been fraudulent, and so quickly stir up inquiry, to that place he would inevitably be traced. And any body but a fool must have known that to go immediately to the house of an accomplice would lead to the discovery of that accomplice, and therefore to his own detection. If I had been deeply and criminally interested in

enabling him to effect his escape, and had the best possible means of accomplishing that purpose in the South, what did he in the North? The sails of the Tonnant were then bent; she was ready to sail; and your Lordship knows that a naval commander is almost as absolute in his ship, as your Lordship on the bench. There can be no doubt that I could have conveyed De Berenger into the Tonnant with the utmost facility under any name and character, and have concealed him there with perfect security. Had there been a fraudulent connection between De Berenger and me, would there not also have been a private correspondence, and must not I have known on the 11th of March, when he was residing at Sunderland, that he was not out of the kingdom?"

This, it must be confessed, is a very shrewd and pertinent question.

"The advertisement of the Stock Exchange was published on the 7th of March, and did not reach me on board the Tonnant at Longreach, in the river Medway, till the day following; and till the moment it did so reach me, I had as little reason to apprehend an accusation of conspiracy and fraud, as of sorcery, or any other imaginary offence. How then could I have made the disclosure sooner than I did? To make the necessary arrangements in the ship, to return to town, and to draw up and swear the affidavit, could not be accomplished in a moment; and yet on the 12th of March my affidavit, disclosing the name of De Berenger, and detailing the circumstances of his visit, appeared in all the morning papers. What becomes of Mr. Gurney's assertion and of your Lordship's triple repetition of the argument that I acted on the supposition of De Berenger being out of the kingdom? To impress on the mind of the jury an opinion that I delayed the disclosure in order to give De Berenger time to escape, was of itself sufficient to produce a verdict of guilty.

"Your lordship praised Mr. Gurney's pointed remark on my adding a postscript. Now I am perfectly certain that no other judge would have quoted such an observation from the prosecuting counsel, unless it were to remark that the learned gentleman had forgotten that there were two sides to the paper, or that the 'something more' might have been written at the top or opposite the signature, or might possibly have been an interlineation, or might have been written across. It is singular that your Lordship found no opportunity of quoting any pointed observation from the speech of Serjeant Best. It is true that your Lordship called for the defence at a time when much point was not to be expected from that learned gentleman! Oh! but I must have known his signature because I corresponded with him. If I have really been in the habit of corresponding with De Berenger, he is probably in possession of some of my letters, and, if so, there is no doubt that revenge for my having exposed him to conviction, and the malice of disappointed extortion, will prompt him to produce them."

This tone of defiance to a supposed co-conspirator must surely proceed from innocence. The guilty dare not threaten an accomplice wholly out of his power.

"I presume that there never was a case resting entirely on circumstantial evidence so clear against the defendant in a cause as not to furnish at least one circumstance from which an inference more or less favourable might fairly be drawn; and since your Lordship exercised the privilege of drawing your own conclusions in my case to an extent unprecedented, I do think that I have a right to complain, that there does not occur, in the whole course of your Lordship's charge, even the shadow of a suggestion in my favour."

After these little episodes of wrath, Lord Cochrane recurs to the main point, that he was no friend of the Baron, and that he saw him as *l'homme vert*. "De Berenger neither dined, breakfasted, nor supped with me at my residence on any occasion in his life. I have met him at dinner two or three times, but not at Mr. Cochrane Johnstone's. If he did wear a different dress to that in which I saw him on entering my house, it did not necessarily follow that I must have been involved in the delinquency of the wearer, or that he must on my return from Snow-hill have had that dress upon him in which he had come in the coach.

"Your Lordship said it did not appear that he had any means of shifting himself. He brought with him the means, and had sufficient opportunity of changing his dress, had he not previously effected it in my house before I returned home."

"Sir S. Le Blanc imagined that De Berenger must have been straitened for time. De Berenger had to effect a change of coats, to open his portmanteau, to take out his green coat, to take off his scarlet coat, to put on his green coat and his grey great coat, to replace his scarlet coat in the portmanteau, and to strap it up, before the operation could be said to be fully effected. But then, on the other hand, it was in evidence that my servant had to go from Green-street to Great Cumberland-street and back, which could not have occupied him less than a quarter of an hour, and if during that period it is impossible to conceive that any change of dress could have been effected, it is further in evidence that he had then to go to Snow-hill, a distance of more than five miles, and occupying an hour and a quarter. So that it is not so impossible to conceive that a change of dress might have been effected during that short interval, as that so learned a judge, during the execution of so solemn an office, should have vented so much absurdity and misrepresentation in one short period!

"The jacket in which De Berenger appeared was entirely green, and the green collar appearing above the great coat was seen by several of my servants, who were waiting to be, and ought to have been, examined to the fact. If it was a plain green jacket, and if it was any uniform that De Berenger wore, it was not his parade but his drill dress. I should have thought it extraordinary if an officer of the Tonnant had visited me at my house in Green-street in naval uniform. If it be regular for officers of the navy to present themselves at the Admiralty in uniform, unless on arriving with despatches, I have hitherto invariably erred in point of etiquette. According to my notions, he appeared as

improperly habited as your Lordship would have been if you had appeared on the bench in the costume of an advocate instead of a judge. In your peculiar phraseology, you say that the animal was hunted home. By hunting him home your Lordship terminated at once both the chase and the question, and left nothing to be done by that special body, the whippers-in, but, on finding the beast of prey in my habitation, to denounce it as his customary retreat, and me as the abettor of his depredations and criminal receiver of the spoils. But I let him go, and Mr. Gurney thought that I should have seized him. This gentleman's views of society are evidently derived from the Old Bailey."

The remarks of Lord Cochrane on the finding of the bank-notes and memorandum were both pertinent and true. "There was not the slightest evidence or ground to conjecture, after Mr. Butt had received the 400*l.* from me, and after they were changed at the Bank for 1*l.* notes at his instance, that one of those notes was ever returned to me, or passed from my hands into those of De Berenger. The memorandum is strongly in my favour. If I had been a party concerned, why was not De Berenger entitled to a per centage on my gains as well as upon those of Mr. Johnstone and Mr. Butt? Why, then, was my name or its initial, and the amount of my profit, omitted? The learned Serjeant, however, who officiated as my counsel, contented himself with saying that cannot be evidence against *the Cochranes*. He might have said that it furnished a very strong argument in favour of *one* of the Cochranes, and he was only prevented, I am convinced, by a sense of duty to other clients. Here is another striking proof of the injustice that was done me in endeavouring to link me inseparably to Mr. Johnstone, by blending the defence contrary to my positive instructions. If this memorandum be authentic, and truly interpreted, it furnishes stronger presumption of my innocence than of Mr. Butt's guilt."

None can deny the reasonableness of his complaint on the refusal to adjourn. "No public inconvenience could furnish an adequate reason for compelling the counsel for the defendants to go on in a question involving their character, prosperity, and peace, to the end of their existence. But the reason was not only frivolous; as a reason it was a mere pretence. No sooner was the speech concluded than your Lordship roused the jurymen by adjourning. It was no longer inconvenient for the public officers to come again to-morrow. Another important object was secured; from the lateness of the hour at which the counsel were compelled to enter on my defence, it was impossible that that defence should appear the next day in print, while the speech of the advocates, by whom they were accused, appeared at full length. The public were thus prepared to approve of the verdict. Why was the defence to be made under worse circumstances than the attack?"

As if thinking aloud, the gallant Lord expressed a strong misgiving that his own counsel had imbibed an erroneous idea of his guilt, and offered to release them from the fetters of professional confidence if they would frankly confess the truth. "I am anxious

that Serjeant Best should state whether, when he admitted that the coat was red and not green, he did not imagine that I had sworn falsely by design. I know that in his speech he attributed my description of the coat to error only; but I am anxious to know whether he did so from his feelings as a man, or his sense of duty as an advocate. Until I am better informed, I shall incline to the opinion that he was actuated by the latter feeling only, because, if he really imagined that he had to defend an innocent man, I do think that he would not, without previously communicating with me on the subject, have had recourse to the dangerous expedient of admitting that to be red which I had sworn to be green, however embarrassed he might have been from the confusion of his brief, or exhausted by the fatigue and long confinement which he had undergone. The account of my solicitors is that two of my servants admitted that De Berenger wore a red coat with a green collar. My servants assure me that they only saw the collar and part of the breast, and so much as they saw was green; that on being questioned by my solicitors whether they would swear that it was not a red coat, they admitted they could not. It might be red, and the green which they saw might be green facings to a military coat. I never examined the servants, or heard, till too late, that the word red was in the brief.

"It was asked by the Attorney-General, 'If the servants could have confirmed the affidavit, where was the advocate who could have been stupid enough to hesitate to produce them?' It is possible, however, that advocates may be prejudiced, may be mistaken, and may be misled by their brief. It is also possible that they may be compelled to attempt the exercise of their duty when incapacitated by faintness and fatigue."

Lord Cochrane concludes his letter with mentioning that the result of his previous speculations had been a gain of 4,200*l.* actually received, and 830*l.* in the hands of the broker, and that he had been more successful at sea than almost any other officer of his standing in the navy, and that he had lived at less expense than almost any other person of his rank in society; and asks what warrant the Attorney-General had for inferring his ruin if he had not sold? Why should he adopt dishonest, having spurned honest, modes of acquiring wealth, when opposed to a sense of duty. He had refused a command in the Mediterranean rather than prostitute the thanks of Parliament.

NOTES TO LORD COCHRANE'S TRIAL.

Note 1. Page 1.

The following eloquent tribute to Lord Cochrane's merits as a naval hero, and testimony to his innocence, is given by Mr. Alison, in his History of Europe. Chancellor Raikes, in his interesting Life of Admiral Sir J. Brenton, has also adduced that officer's attestation to the tender

humanity, as well as enthusiastic bravery, of the gallant lord at the Basque Roads.

"Lord Cochrane was, after the death of Nelson, the greatest naval commander of that age of glory. Equal to his great predecessor in personal gallantry, enthusiastic ardour, and devotion to his country, he was perhaps his superior in original genius, inventive power, and inexhaustible resources. The skill and indefatigable perseverance with which during the Spanish war, when in command only of his own frigate, he alarmed and distracted the whole coast from Toulon to Barcelona, has never been surpassed; with the crew of a frigate which did not exceed three hundred and fifty men, he kept ten thousand of the enemy constantly occupied. It was his misfortune to arrive at manhood and high command only towards the close of the war, when the enemy's fleets had disappeared from the ocean, and the glorious opportunities of its earlier years had passed away. More truly than Alexander the Great, he might have wept that there no longer remained a world to conquer. His coolness in danger was almost unparalleled, even in the English navy, and in the days of Nelson and Collingwood*; his men, nevertheless, had such confidence in his judgment and resources, that they would have followed wherever he led, even to the cannon's mouth. Unhappily for himself and his country, he engaged with little discretion when ashore in party politics; he stood forth as a prominent opponent of government on various occasions, on which he unnecessarily put himself forward in contests with which he had no concern; while his strong inventive turn led him, when unemployed, to connect himself with some transactions with which his heroic qualities had no affinity.

"In consequence of these unhappy indiscretions and connections, he was, towards the close of the war, brought to trial before the Court of King's Bench, for a hoax practised for jobbing purposes on the Stock Exchange; and, under the direction of Lord Ellenborough, convicted and sentenced to imprisonment and an ignominious punishment, the worst part of which the better feeling of government led them to remit. The result was, that the hero of Basque Roads was dismissed the navy, bereft of his honours, and driven into the service of the South American republics, where his exploits, of the most extraordinary and romantic character, powerfully contributed to destroy the last relics of the Spanish Empire in that quarter, and establish the doubtful ascendancy of democratic fervour. But in a free country, no deed of injustice, whether popular or ministerial, can permanently blast a noble character. With the changes of time, the power that had oppressed England's greatest existing naval hero passed away; another generation succeeded,

* In Basque Roads, a seaman sitting by Lord Cochrane's side in a boat was killed by a cannon shot from one of the French vessels, when in the act of looking through a telescope at the enemy's fleet: without saying a word or averting his eye, he took the instrument out of the dead man's hand, and completed the observation.

to which his exploits were an object of admiration, his weaknesses of forgiveness, his wrongs of commiseration. One of the most deservedly popular acts of the new ministry which succeeded to the helm after the overthrow of the Tory administration, was to restore him to the rank and the honours of which he had been deprived; and there remains now to the historian only the grateful duty of lending his humble efforts to aid in rescuing from unmerited obloquy the victim of aristocratic, as he has frequently done those of popular injustice."*

Note 2. Page 45.

It was the former practice to sit out the trial, however long, whether for felony or misdemeanour, and never adjourn. In the trial of Lord George Gordon the Court sat from eight o'clock on Monday till a quarter to five on Tuesday morning, and Mr. Erskine's memorable speech was delivered long after midnight. The prosecution of Stratton and others, for deposing Lord Piggot, terminated at two in the morning. The trial of Downie for high treason at Edinburgh lasted till four in the morning; of Colonel Despard, before Lord Ellenborough for the same offence, till between five and six. Curran made his most eloquent harangues in the Irish State Trials after midnight.

A better practice was introduced by C. J. Eyre on the trial of Crossfield for high treason. The Court adjourned at eleven at night, C. J. Eyre saying that he should be sorry, by forcing the counsel on, to put them under any incapacity to do their duty.† In Hardy's case the same excellent judge, with his humane good sense, declared that there was a necessity for adjourning, and that the Court ought to adjourn, where the attention of the jury could not be kept alive, and where they could not obtain that assistance from the Court, which by law they were entitled to have. They could not exercise their faculties properly after sitting up three days and two nights. The Court was then adjourned at a quarter past twelve to eight.

On the trial of Horne Took for high treason, that bitter wag, who loved rebellion well, but a hoax better, exulted in the notion that there

* Lord Cochrane was tried for alleged accession to the Stock Exchange hoax, before a most able and powerful judge, Lord Ellenborough; and being convicted, was sentenced to imprisonment and the pillory. There can be no doubt that the evidence tending to connect him with the facts charged was of a very strong, though chiefly of a circumstantial kind, and the judge was constrained to exhibit the case in an unfavourable light against the accused to the jury. Yet the author, after hearing Lord Cochrane deliver his defence in the House of Commons, on July 7. 1814, has never entertained a doubt of his innocence; and even if the facts charged had been distinctly brought home to him, it was surely a most unwarrantable stretch to sentence to the degrading punishment of the pillory so heroic a character, especially for a proceeding involving no moral turpitude, and rarely if ever before or since made the object of punishment.

† State Trials, vol. xxvi.

could be no adjournment without his consent, and chuckled over the prospect of judge, jurymen, and prisoners going alike dinnerless and unshaved. His counsel exercised a wiser discretion, and acceded with alacrity to the convenient adjournment. The modern course has invariably been, except on the pressure of a crowded assize, not to force reluctant and exhausted nature, or attempt impossibilities. The impropriety of sitting through the night has been so generally admitted, that, in February, 1834, Mr. O'Connell obtained the appointment of a select committee to inquire into the conduct of Baron Smith as a judge, one of the chief charges being his persisting to sit past midnight. Secretary Stanley pronounced it blamable and indecorous to sit from half-past eleven in the forenoon till six o'clock next morning. Sir James Scarlett mentioned a precedent where Judge Chambre had despatched twenty cases in one night; but, though the motion for a committee was afterwards most justly rescinded, none defended the practice.

TRIAL

OF

THE WAKEFIELDS

FOR CONSPIRACY AND ABDUCTION OF MISS TURNER.

BEFORE BARON HULLOCK, AT LANCASTER,

March 23. 1827.

Counsel for the Prosecution: Serjeant *Cross*, Mr. John *Williams*, afterwards Mr. Justice *Williams*, Mr. *Brougham*, afterwards Lord *Brougham*, and Mr. *Starkie*.

Counsel for the Defence: Mr. *Scarlett*, afterwards Lord *Abinger*, Chief Baron, Mr. *Coltman*, afterwards Mr. Justice *Coltman*, Mr. *Parke*, afterwards Baron *Parke*, and Mr. *Patteson*, afterwards Mr. Justice *Patteson*.

INTRODUCTION.

AN outline of the facts which led to this most curious trial is interesting as romance, and more true than many histories. Miss Ellen Turner was the only daughter and heiress of William Turner, Esq., a gentleman of large landed property residing at Shrigley Park, Cheshire. She had attained the age of fifteen in February, 1826, and was at a boarding-school kept by the Misses Daulby at Liverpool. Her fortune and expectations had been made known to Mr. Gibbon Wakefield during his visit to Dr. and Miss Davies at Macclesfield, and a plot was formed, on the model of Vanbrugh's or Wycherley's comedies, to lure the young lady from school, that she might become Mr. Wakefield's bride. A French servant, Thevenot, was sent with an empty carriage and a letter to the schoolmistress, announcing the dangerous illness of Mrs. Turner, and that the private

carriage of the physician had been procured to convey her daughter home. The valet had been well tutored in names and dates, and the device succeeded to a miracle. Miss Daulby entertained no suspicion: and, after some inquiries, as the girl recognised neither the servant nor the carriage, resigned her charge to the care of the adroit stranger, who conveyed her in safety to the Albion Hotel, Manchester. There Mr. Gibbon Wakefield, a gentleman from Paris, of fashionable exterior and address, introduced himself to the school-girl, and explained that the illness of her mother was a mere pretext; the real reason for her being summoned from school being her father's pecuniary difficulties, and that he was sent to escort her to him, as he could not venture to appear in person. Mr. William Wakefield joined his brother, and their familiar acquaintance with the household words at Shrigley laid to sleep any suspicion, that might for a moment be awakened. She stepped into the carriage to meet and comfort her father with confiding alacrity, and was amused with reports *en route* of Mr. Turner sallying forth to meet her, but being pursued and prevented. He had made his fortune by commercial pursuits, and the terrible mercantile crisis of the preceding year, which had been much discussed in the family circle at Christmas, appears to have made a deep impression on her mind. They posted in a carriage and four by a circuitous route through Yorkshire to Kendal, and thence to Carlisle. The two brothers had exerted all their address on the way, without distressing her feelings too deeply, to work upon her fears; that the people surrounding the carriage at the inn-door were bailiffs; that her father was lying snug in a back room, but could not stir for fear of arrest; that both the Macclesfield and Blackburn banks, where he kept accounts, had stopped payment; but they had a rich uncle, generous and wealthy, who had agreed, on the persuasion of Gibbon Wakefield, to advance 60,000*l.*; and, as a climax, Mr. Grimsditch, the family solicitor, had written a letter, which the clever suitor read or pretended to read, suggesting a marriage between them, the only device by which the family could be saved from ruin. The fertile genius of Richardson or Fielding never suggested a more notable ex-

pedient. Never was Miss Byrom, or Clarissa Harlowe, or Miss. Allworthy, in a more peculiar position; a school-girl, yet an heroine, environed with difficulties. She was startled and confused, and wished to see her father; but he could not be seen at Carlisle, and contented himself with sending his blessing and a message that she should not lose a moment, but hasten across the border, and liberate him from all his difficulties.

> "Was ever maiden in this humour wooed?
> Was ever maiden in this humour won?"

The natural love of the child prevailed,—she yielded a timid assent. In the language of Serjeant Cross, "They carried her off into Scotland, and under the influence of terror at the impending destruction of her family and their fortunes, if she refused compliance, and in the hope that she might be the saviour of them all, she gave her hand to Gibbon Wakefield, in a pretended contract of marriage in Scotland, in the presence of a drunken blacksmith, the landlord of a public-house, and a post-boy." Fortunately the marriage was not consummated, the arch artificer of the fraud being under an erroneous but salutary terror of the law remaining capital in case of defilement. As no case had occurred for one hundred years, the law had been repealed, like rusty armour taken down from the wall; but the marriage beyond the border had interposed a technical difficulty to any prosecution for felony, of which he was not aware. In dread of pursuit and recapture, the wondering bride was hurried away, as by forced marches, first to London and thence to Calais, a journey of between five and six hundred miles in five days; a series of adventures more harassing to mind and body than those of all the heroines she had ever read of, or wept over. An announcement of the marriage, with all due pomp and ceremony, in the *Morning Post*, and a modest paragraph announcing, among the departures from London, Mr. and Mrs. Edward Gibbon Wakefield for Paris, first communicated the astounding intelligence to the relatives. They lost not a moment in seeking to recover the lost prize. Armed with a warrant, and attended by a Bow Street officer, the uncles of Miss Turner and Mr. Grimsditch hurried to Calais, where the deluded

girl threw herself with delight into the arms of her kinsmen, and turned from her betrayer with horror, on the whole scene of fraud and cruel falsehood being exposed. A French magistrate authorised the aggrieved relatives to take her home forthwith; and they immediately commenced criminal proceedings for a conspiracy at common law against the two brothers, Edward Gibbon Wakefield, and William Wakefield, their French servant Edward Thevenot, and Frances Wakefield, their step-mother. A true bill was found at the Lancaster Summer Assizes for 1826; but the parties exercised their right of traversing, and thus delayed the trial to the following assizes. The indictment was removed by certiorari into the King's Bench, and a special jury struck to try the issue, as a Nisi Prius record. Had the case come on for trial at the Summer Assizes, Sir John Copley, then Attorney-General, would have led for the prosecution, and an important chapter would have been added to the annals of forensic eloquence. In the interval he had been elevated to the office of Master of the Rolls; and the task devolved on Serjeant Cross, a high-minded gentleman, but somewhat heavy lawyer, who exemplified the notion of a blunt orator introduced by one of Shakspeare's clowns: "I say right on." Never was an opportunity for the display of eloquence of the highest order more completely lost and abandoned on the part of the prosecuting counsel by inability, and of defendants' counsel, Mr. Scarlett, by disinclination. Subtle, adroit, insinuating, this *thirteenth juryman* disliked his part, and shunned the inconvenient display, as he despaired of moving the sympathy of his audience. Both advocates appeared to act upon Goldsmith's notion, when he discoursed of eloquence in the middle of the last century, and said, "That the eloquence which speaks to the passions is a species of oratory almost unknown in England; at the Bar it is quite discontinued, and, I think, with justice."*

This unhappy criticism was written in 1759, in the days of Murray and Yorke, but before the genius of Erskine had illumined the courts with strains of witching oratory. Appeals to the passions have since been made with the greatest

* Goldsmith's Essays.

power and success, some felicitous specimens of which, most honourable to their authors and effective, are contained in these volumes. But in none was there opened so rare an opportunity for displaying the highest attributes of oratory, fierce vituperation, pathetic narrative, withering scorn,—"*hæc verberat, hæc lacerat, hæc, hæc cruentat oratio.*" The singing bird snared in the net of the fowler; a girl of fifteen betrayed into marriage by feelings of filial piety; the scheming fortune-hunter, eager to secure the heiress, without pity for the child, were themes on which mere Cymons in speech might be inspired "to play the orator." The case, indeed, required no setting; the facts were too clear to need the slightest arts of advocacy. The verdict was won the moment Miss Turner had been examined. When judgment was prayed, in the following term, upon the two Wakefields, three counsel were heard at length to enhance and aggravate the guilt of the elder brother, and three counsel spoke in mitigation of sentence on the younger. As if to show how utterly ineffective the six speeches had been, a like term was passed on each, of three years' imprisonment, the place of confinement only being different. Miss Turner was afterwards married to Mr. Leigh, of Lyme, and died young, leaving an only daughter, who has also married. Mr. Gibbon Wakefield, on his release from prison, took an active part in colonising New Zealand, and appears to have sought by the labours of mature manhood to redeem the sin of his youth.

Some interesting questions occurred on the trial, particularly one involving the validity of the marriage. But three or four cases occur, at long intervals of time, in the various collections of trials, at all resembling the present. In the first one, Lucy Ramsay was inveigled into a coach in Hyde Park. Browne, who had employed the persons in the park that spirited her away, afterwards prevailed upon her to marry him, on the threat that, if she refused, he would convey her secretly to France.* In the second case, one Pleasant Rawlins, an heiress, was arrested on a pretended debt, at the instigation of a German adventurer, Swendsen. He had been her suitor, without much chance of success, and

* 1 Ventris, 243.

hastened to her, when in custody of the sheriff's officers, to take advantage of the time and place. On his assurance that the only thing to prevent her being taken to Newgate was to marry him instantly, she consented. The marriage immediately took place, one of the Fleet-parsons, those pests of society, being at hand to perform the ceremony. Notwithstanding their marriages under constraint, the two ladies were examined; and, upon their testimony chiefly, both Browne and Swendsen were convicted, and afterwards executed, the consent being held nugatory, as it had been induced by fear and fraud.* In the third case, R. *v.* Perrey, tried before Sir Vicary Gibbs, then recorder of Bristol, the lady obtained a triumphant acquittal for the supposed conspirator. She entered the witness-box fearlessly, and deposed that the defendant had used no other arts than what a lover ought, and that she had eloped with him of her own free will, and with her entire consent.

The termination of the trial was equally abrupt in a fourth case, the King, on the prosecution of Mrs. Fanny Lee, against Lockhart and Loudon Gordon, tried at Oxford, in 1804, before Mr. J. Lawrence, for a forcible abduction; but very different in some of its circumstances from the present, for there the conduct of the lady gave an appearance of connivance. Though carried with seeming violence out of her own house, she was a married lady living apart from her husband. She rode cheerily in the different post-chaises, flung a camphor-bag, which she had carried as a charm, out of the window, and, supping at Petsworth with the two gentlemen, conversed, according to her own evidence, about hieroglyphics and Grecian architecture! The judge stopped the case, as there was a total absence of proof of force in the county in which the trial took place.

Neither the fear, in Miss Turner's case, nor the fraud, was held sufficient to invalidate the marriage contract, which had been solemnized in Scotland, and, though irregular, was binding by the law of Scotland. The lady could only be freed *â vinculo matrimonii* by a special act of parliament passed in the following session, declaring that the marriage

* 5 State Trials, 450.

was null and void. That a marriage so contracted, the fruit of false pretences, should be considered a valid contract of marriage, excited a general feeling of indignation at the time, and the attention of the legislature was loudly invoked to repair the mischief, and assimilate the laws of the two countries. But so inveterate is the force of national prejudice, so determined the opposition of our neighbours beyond the Tweed to all tampering with their institutions, that, though twenty-two years have since expired, the law remains unaltered. Except for the change effected by railway travelling and electric telegraph messages, the law of Gretna Green marriages continues in effect the same. Lord Brougham, whose able, but abortive, efforts as an advocate to prove the marriage invalid, are conspicuous in the present trial, has since made the most strenuous exertions to rectify this defect in the law. But law reform, when it comprehends national institutions, generally proceeds at a lame, halting pace; and the Scottish law, though attacked almost yearly, remains unchanged, universally condemned in England, in Scotland universally extolled; always threatened, still existing.

The evil was thus vividly portrayed by the great law reformer and great law orator, but in vain: "I take you for my wife, says the one; and I take you for my husband, says the other; and that, according to the Scottish law, is a good and valid marriage, by which a youth of the highest title and largest property may be allied to the most abandoned character. A party in Scotland cannot bargain for the purchase or sale of one twentieth part of an acre of land, nor charge it with one single shilling, by the most sacred instrument under his hand and seal, till he is one and twenty years of age. But when he is fourteen the same individual, though he may be the first duke in the land, may in one moment of time, without one instant being given for delay, for cooling the passions, for obtaining the advice of parents, friends, or guardians,—without the '*spatium requiemque—dolori*,' I was going to say, but that will not apply to my subject,—contract an imprudent and bad alliance by marriage, by saying merely these words, 'Will you accept of me as your husband?' and the other party saying 'Yes.' That is as good

and valid a marriage as ever was made by king, priest, pope, or bishop." *

In 1834 and 1835, the learned lord laboured in vain to reform the Scottish law, and weed it of these abuses; but the national partialities of a proud people, and their loudly expressed repugnance, prevailed. A renewed attempt last year met with a similar fate. It speaks well for the continence and forethought of the nation that such a law should be to them innocuous.

The spacious shire-hall at Lancaster was crowded to excess, at the early hour of seven in the morning, with an eager and anxious audience. Mr. Starkie opened the indictment, and Serjeant Cross stated at length the curious facts.

The action of this spirited legal drama was then opened by a short dialogue between Mr. Williams and the father of the supposed bride.

Mr. Turner stated "that his daughter, Ellen, was an only child, and fifteen on the 12th of February, 1826, scarcely a month before her abduction. That he was in possession of landed property in the county of Chester, and of considerable personalty. That he had been in 1827 high sheriff of the county. That his daughter had been taken to school at Miss Daulby's, in Liverpool. She had been at home from December to February, and he had not observed any alteration in her manner as to gaiety or seriousness, or in any other respect during that time. Before the month of March, 1826, he did not know the person of Mr. Edward Wakefield, or that there was such a person at all. He was equally ignorant of the existence of the other defendant; nor was his daughter in any degree of acquaintance with either."

Mr. Scarlett was too adroit and wary to teaze the unfortunate father, and run the risk of irritating a juryman, by asking any thing more than an insignificant question or two respecting his shrievalty.

Miss Elizabeth Daulby, the unlucky schoolmistress, stated "that she and her sisters kept a boarding-school in Liverpool,

* Lord Brougham's Speeches, vol. iii.

and Miss Ellen Turner had been under her care between five and six years; that when Mr. Turner took away his daughter at the Christmas immediately preceding, he left part of the account unsettled, being short of money. After Miss Turner had come back from the Christmas holidays, one morning in March, a servant arrived at her house in a private carriage, and delivered to her a letter, most skilfully penned, to lull suspicion. The person who brought the letter said he came from Shrigley; he was sent for Miss Turner; that Mrs. Turner was very ill. I asked him when she was taken ill. He said, the night before, whilst at supper, the knife and fork dropped from her hand. I asked him if Miss Turner would know him. He said, she would not; he had been lately engaged by Mr. Turner to go to the new house." Miss Daulby was aware that Mr. Turner was about to remove to a new house, and the mention of this little fact removed all suspicion:—

> "For oft when Wisdom wakes,
> Suspicion sleeps at Wisdom's gate,
> And to Simplicity resigns her charge,
> Thinking no wrong where no wrong seems."

The witness continued: "I went and told Miss Turner that Mrs. Turner had sent for her, and wished her to go home; she was not so well as usual; Mr. Turner was absent; and she wished her to go home sooner than was intended. I then asked the man if she was to travel alone. He said, she was not; they were to take up Dr. Hull at Manchester. On Miss Turner getting into the carriage, she said it was not her papa's carriage. The man said it was the doctor's. She then left the house inside the carriage, and the man on the barouche box."

Miss Daulby never discovered the deception till Sunday, the 12th of March. The cross-examination of this lady was short, but clever and artful.

She was very well educated (Miss Turner), was not she? I don't mean it as a compliment to you, but as a fact?—She had been well grounded as far as her education had proceeded.

But she had capacity?—Certainly she had.

Rather clever, was not she?—Yes.

A very clever girl, was not she?—She had very excellent talents.

And very great quickness?—Yes.

And sagacity?—Yes.

Very quick at learning, was not she, always?—Yes, very.

And a very good temper and disposition?—Yes.

Re-examined by Mr. Brougham. My friend has asked you about Miss Turner's temper and disposition. What was her disposition as well as her talents?—Her disposition was very good.

Now, was she of a suspicious, or of an easy, confiding disposition?—Oh! remarkably confiding, sir.

Not suspicious?—Not in the least.

Was she of an open and ingenuous temper?—Yes.

And remarkably confiding?—Yes.

The fraudulent letter was then read; and scarcely in the annals of imposture can there be found a written false pretence more ingeniously penned to serve its purpose. The letter was dated Shrigley, Monday night, half-past twelve, March 6th, signed John Ainsworth, M.D., and addressed to Mrs. Daulby. "Madam, I write to you by the desire of Mrs. Turner of Shrigley, who has been seized with a sudden and dangerous attack of paralysis. Mrs. Turner wishes to see her daughter immediately. A steady servant will take this letter and my carriage to you, to fetch Miss Turner; and I beg that no time may be lost in her departure, as, though I do not think Mrs. Turner is in immediate danger, it is probable she may soon become incapable of recognising any one. Mrs. Turner particularly wishes that her daughter should not be informed of the extent of her danger, as without this precaution Miss Turner might be very anxious on the journey; and this house is so crowded, and in such confusion and alarm, that Mrs. Turner does not wish any one to accompany her daughter. The servant is instructed not to let the boys drive too fast, as Miss Turner is rather fearful in a carriage.—Postcript. The best thing to be said to Miss Turner is, that Mrs. Turner wishes to have her home rather sooner for the approaching removal to the

new house, and the servant is instructed to give no other reason in case Miss Turner should ask him any questions. Mrs. Turner is very anxious that her daughter should not be frightened, and trusts to your judgment to prevent it. She also desires me to add, that her sister, or niece, or myself, should she continue unable, will not fail to write to you by the post."

The purchase of the carriage referred to in this letter, and the meeting of the conspirators with the lady at Manchester, were next clearly shown.

Mr. Carr, a coachmaker at Manchester, proved the coming of the two brothers to his establishment on Monday, the 6th of March, to purchase a second-hand carriage of a dark green colour; it was bought for 30*l.*, and directions given that it should be sent that evening to the address of Captain Wilson. Mr. Edward Wakefield was the gentleman who made the bargain with witness, and paid him with the very bank post bill that had been lent by Mr. Bagshawe, the banker at Macclesfield, to Miss Davies, the day before.

It was next proved by Houlgrave, a waiter at the Albion Hotel, Manchester, that the servant Thevenot and the lady arrived there about half-past twelve on the Tuesday; that the two Wakefields came soon after, that in five or ten minutes four fresh horses were ordered to be put to the green carriage; and they drove off, Mr. Edward Wakefield and Miss Turner inside, and Mr. William Wakefield on the box. A good piece of amateur acting was related by the post-boy who drove the servant to Miss Daulby's, that he was desired to pull up near the school, when Mr. Wakefield got out. He thanked the servant for his ride, and said he had given him a great lift. The servant said, "You are welcome." They then parted to play their different parts in the abduction.

It would appear from a letter that was produced by the landlady of the Nag's Head at Warrington, a town situate half way between Manchester and Liverpool, that Edward Wakefield had been left behind at Liverpool, when Thevenot carried off his intended prize, and that William Wakefield had just seen her start *en route* to Manchester. The note was in his handwriting, addressed to Captain Wilson, the

travelling name assumed by his brother, and without signature.—"Go you immediately to where we dined yesterday on cod and mutton chops. She is to wait for her father. She has just left this place at eleven o'clock." This was the prothonotary's translation of the following passage in French:—"Elle doit y attendre son père; elle est partie d'ici à 11 heures." "Write to Mr. Wilson at the same place from wherever you succeed."

In the hurry of the pursuit this curious production was left behind, and produced in court to throw fresh light on the tricks of the conspirators.

An hiatus was here left in the case for the prosecution. It was not thought expedient to call Miss Turner herself, in this early stage of the evidence, to narrate the particulars of that strange interview, only paralleled by the scenes of Farquhar and Wycherley, when the pseudo Captain Wilson introduces himself to the school-girl. The post-boys who drove them on the first stages during that evening and night spoke too freely to the alacrity of the young lady, the high spirits of girlish wonderment and delight—naturally elated at the new *dramatis personæ* of this romantic adventure—to be trusted as witnesses. The poor girl had been kept travelling all night by a circuitous route through Yorkshire to Kendal, and thence to Carlisle; but Mrs. Holmes, the landlady of the Bush Inn there, was the first who spoke of her on the journey, and deposed to her arrival on the Wednesday morning, a little before noon. "I went myself," said the old lady, "to ask her to alight out of the carriage; but one of the gentleman (the taller gentleman) stepped on one side, and put his hand on the carriage door, and said, 'No.' A friend near me observed that the lady looked very dispirited; and it was on that account that I went to the carriage to ask her to alight; and I thought it my duty to go, which I did myself."

The carriage stopped at the door a quarter of an hour, when they drove off, and returned about six in the evening; the so-called marriage at Gretna having been then performed. It was the object of Mr. Scarlett to show that, after leaving Manchester, the young lady was a willing party to the elope-

ment; and he elicited that she was by herself in the carriage; that a waiter, named Atkinson, first opened the door; "because," said the counsel, "we shall know whether the lady wished to get out or not;" that they had tea on their return, and left, after two hours, in a post-chaise; the old carriage, unused to such extra service, being broken and unfit for use.

Miss Curwen, a niece of the landlady, confirmed her aunt's notion that the lady was very much depressed. "I said to Mrs. Holmes the lady looked the very picture of despair. I thought so at the time."

Cross-examined by Mr. Scarlett. Did you not rush to the door and let her out?—No; it was not my place to do it.

The waiter at the inn at Penrith spoke to the party passing the night there, arriving about eleven, and retiring to separate rooms. The lady was first in the breakfast-room next morning, and sat reading a book, seeming very composed. When asked if she would take breakfast, she said, "I don't know, you must inquire of the gentleman." After a hurried meal, Edward Wakefield and the bride started for London in the mail, and are next heard of at the Brunswick Hotel, Hanover Square, at eleven o'clock on Friday night. Miss Turner was there seen in the bed-room, crying. Well might she weep from anxiety and fatigue, having been enforced to make a tedious journey of several hundred miles, travelling, almost continuously, four days and two nights, not seeing her father, and naturally perplexed at the mystery of her situation.

They only rested an hour and half at an hotel in London, when the carriage and four were again ordered to the door, hot pursuit being dreaded; and Mr. Edward Wakefield wrote their address for insertion in the newspapers—"Mr. and Mrs. Edward Wakefield for Paris." A formal paragraph, announcing the marriage of Mr. Wakefield at Gretna to the heiress of Mr. Turner, was also inserted. This announcement of the marriage in the papers of Saturday, March 11th, was the first information that reached Mr. Grimeditch, the intelligent and active agent for the prosecution, of the strange affair. He learnt the whole particulars and the character of the transaction on Tuesday, the 14th, at a very early hour in the morning, and immediately waited

on the Secretary of State, and procured a warrant from Bow Street. He reached Calais about three or four o'clock on Wednesday, the 15th, accompanied by Mr. Robert Turner and Mr. Critchley (Miss Turner's two uncles), Mr. Walford, and Ellis, a Bow Street officer.

The rest of his examination is too graphic not to be given in the first person, as repeated by himself, from notes taken at the time:—

"I first saw Mr. Edward Gibbon Wakefield in the court-yard of Quillac's hotel. I went up to him, in company with Mr. Robert Turner and Mr. Critchley, and mentioned my name and where I came from, and he appeared to know me.

"He said, 'Oh! will you be so good as to walk into my room.' I went into his room with Mr. Robert Turner; we followed him up stairs, Mr. Robert Turner and myself, and went into his room. I told him that we had come there by desire of Mr. Turner, to take back his daughter, whom he had taken away in a very improper manner. He said, 'But I understand you have taken legal proceedings against me.' —Then, pointing to Ellis, the Bow Street officer, who had come in rather suddenly, he said, 'Who is that man?' I desired Ellis to withdraw, which he did, and I told him that we insisted upon seeing Miss Turner immediately. He said, 'I wish to know whether you intend to prosecute me?' I told him we did intend to prosecute him; how could he expect any thing else? That he had stolen Miss Turner—and I told him I had a warrant in my pocket, and a despatch from Mr. Canning to Lord Granville at Paris. He said he knew all about that warrant, and all we had done in London —his friend Percy had come in the same packet. Mr. Henry Critchley then entered the room. He again asked whether it was really intended to prosecute? and I told him that the strongest measures had been resorted to, and would be—he could expect nothing else. But the first thing I demanded was, to produce the young lady; and I asked him (in a peremptory tone) to give me an answer, Yes or No. He then asked, with some agitation, 'But is she to be my wife?' I told him we could not enter into that question; that the act he had been guilty of was a most atrocious one; that he had

got possession of Miss Turner, whom he had never seen—a mere child, by means of a forged letter; and that he deserved to be shot."

Upon your observing that, what further passed?—"I also added upon that occasion—I said, he had struck a blow at the peace of the family, the effects of which he never could repair, or to that effect; that I thought it would be the death of Mrs. Turner, if she was not dead already; and that we had left Mr. Turner in London broken-hearted, and unable to go another yard after his lost child."

Well, sir?—"He said my animadversions were severe, but that he did not attempt to justify his conduct—that he had a daughter. His words were, 'I have a daughter, and if any man were to take her off in the same manner, I believe I should send a bullet through his head.' Then he added, 'But is the marriage legal? If it is, I must keep her; if it is not, I can have no claim to her.' I told him it was not only illegal, but that he was liable to severe punishment. I told him there was an Act passed in the reign of Philip and Mary which declared such a marriage void, and also subjected the party to a heavy punishment. I said, 'It is useless to go into these discussions; we are authorised to take back Miss Turner, and take her we will!' Mr. Critchley and Mr. Robert Turner both joined in peremptorily demanding to see her; and I told him that I should seek the assistance of the police at Calais if he refused. He told me he had more interest with the police than I had."

Was any thing said about who should see Miss Turner first; did he say he should see her first, or you?—"He said, if she was to be his wife, it would be desirable that certain questions should not be put to her, and certain facts not disclosed; and desired us not to disclose such particulars as he would point out, nor put such questions as he would mention, for her own sake, if she was to be his wife."

Well, did he say what she would do, or was likely to do, when she saw you?—"He again spoke of her being his wife. Mr. Critchley said to him, 'I wonder how you can expect that we should enter into such terms!' or words to that effect; and he added, 'We must first see her; you may have made

some impression upon her:'—those were the expressions of Mr. Critchley."

Well, now, what answer did he make to that?—"He said, 'Oh, as to that, you will find her perfectly passive. She may think favourably of me; but nothing compared to the unbounded affection that she has for her parents. I dare say she will fly to you, and from me, when she sees you.' He also said, 'I should wish to make every reparation;' and, again, he said, if she was to be his wife, he was anxious that certain facts should not be disclosed to her, and desired that he might be present at our interview. Mr. Wakefield then went, and in (I should think) two minutes brought Miss Turner from a room which was said to be Madame Quillac's room. I went up stairs before them, and showed her into the room where her relations were, and shut myself and Mr. Wakefield out. Upon that he said to me, 'Well, Mr. Grimsditch, I assure you, upon my honour, that Miss Turner is the same Miss Turner as she was when I took her away; there has been no consummation of the marriage.' I told him I was very glad to hear him say that. I then went into the room where Miss Turner was with her uncles, and I learnt then the particulars of the falsehoods and frauds which had been practised upon her."

You had not heard what passed in the room?—"Not what passed previous to my going in. In about twenty minutes, I think, we sent for Mr. Wakefield, according to Mr. Critchley's pledge; and when he came in, I said to him, 'We find that you have practised upon this poor child the most extraordinary deception and fraud ever heard of.' I said that it was a very cruel case; that we should not only take her from him, but that we should put him into the custody of a Bow Street officer. He told me I was on the wrong side of the water for that. I told him the police would assist; and I again produced the despatch which I had procured from Mr. Canning, but he told me that neither that nor the warrant would avail. He said he claimed her as his wife. We had much discussion about it. At length Mr. Critchley said, 'I am quite sure, Mr. Wakefield, it is an illegal marriage;' but he still said he claimed her as his wife. And,

upon that, Miss Turner spoke for the first time in Mr. Wakefield's presence;—upon Miss Turner hearing him say that, she said, 'I am not your wife; I never will go near you again—you have deceived me.' In saying this, she clasped her uncle, Mr. Critchley, round the shoulders in wild agitation.

When she clasped her uncle round the shoulders, what did she say?—"She said, 'I am not your wife; I never will go near you again—you have deceived me.' Mr. Wakefield said to her, 'You must acknowledge I have behaved to you as a gentleman.' She said, 'Yes, I do acknowledge that; but you have deceived me, and I will never go near you again.' He adverted very frequently to the legality or illegality of this marriage; and I said to him, 'I am surprised that you can for a moment suppose that this is a legal marriage!' and I told him that he must know as well as I did, that a marriage obtained by force or fraud could not be legal. He said he had not used force. I said, 'What do you call it, then? you got possession of her by means of a forged letter—she was wholly in your power;' and I added, that he had taken her off in a chaise and four and conveyed her away by deception and fraud from beginning to end."

What said he to that?—"He said, 'I do not attempt to justify my conduct.' And he repeated again, if anybody had behaved so to his daughter, he believed he should have shot him, unless reflection at the moment should have restrained his passion."

Almost as truth-spoken and descriptive to the life as the notes of Mr. Grimsditch was the following letter then read from Edward Gibbon Wakefield to his brother, dated Calais, Thursday:—

"My Dear William,

"I write in haste to save the post, only to give you news, and nothing else. Mr. Robert Turner, Mr. Critchley, and Grimsditch, arrived by the packet to-day with warrants, &c. I soon knew what they were come for, but would not attempt to avoid the question. Shortly, I saw them, and found that, with Ellen's consent, they could take her away. They insisted on seeing her. I could not object. She *told all*, and was anxious to leave me,

when she knew all. I expected as much, and therefore made a merit of necessity, and let her go. They tried to take me, but for that they were on the wrong side of the water, as I well knew. However, I offered to go with them, but begged Mr. Critchley to believe that I would be in England to answer any charge, as soon as I had seen my children and settled my affairs. Nothing could be more hostile than the whole spirit of their proceedings. I could readily have escaped with Ellen, but their account of Mrs. and Mr. Turner's state made such a step impossible. I made and gave in writing a solemn declaration, that she and I have been as brother and sister. How this may affect the validity of the marriage, I know not, nor could I raise the question: I was bound, and it was wise, to give some comfort to Mr. Turner. I am now in a stew about *you*, and wish that you were safe. There can be no doubt that the law can punish us. For myself, I will meet it, come what may; but, if you are able, get away as soon as possible: I do not care a straw for myself. The grand question now is, is the marriage legal? They all said no, and quoted William and Mary upon me till I was tired of their majesties' names. Pray let me know that. But I write to Nunky. Do not stay—you can do no good. I shall go to England as soon as possible; upon this you may depend. I shall not write again till I hear from you for fear of accidents. Percy came with the trio, and has witnessed the row. We start early in the morning. Pray write, but say nothing to anybody. I am the person to speak.

"Yours ever,

"E. G. W."

The forensic drama had now reached its most interesting point, for Miss Turner was brought into court. Before she was sworn Mr. Scarlett rose to object to her evidence; and the young lady retired, and continued absent during the discussion that ensued.

Mr. Scarlett.—My Lord, I propose to show that this witness is incompetent. My Lord, the threat of my learned friend certainly will not deter me from doing what I conceive to be my duty in point of law, when I am called upon to do it. If he thinks it necessary for his case to examine this young lady, of course I must conceive his object in examining her is to affect the criminal party. And therefore I propose to show to your lordship, she is legally married to Mr. Wakefield. I can do that by giving evidence of the marriage, and

other circumstances to show it was a legal marriage; and therefore I apprehend she cannot be examined as a witness. I apprehend I have a right to do that without examining her on the *voir dire*.

Mr. Baron Hullock. I don't know that, Mr. Attorney. Supposing the marriage should turn out to be an invalid marriage, that fact must be acquired through the medium of her evidence. But if the marriage should be considered a good marriage,—that is, should be proved to be a good marriage according to the law of that country in which it was performed,—then another question will arise, whether, even if she be the legal wife of this gentleman, she may not still by the law of this country be a competent witness.

Mr. Scarlett argued the case as if the rules of law were that a wife could in no event be admitted as a witness against her husband, save only for the purpose of proving force or some criminal charge. The wife's testimony had never been received under the statutes except where force had been used. This principle was laid down too broadly, for in the case of Rex *v.* Perry cited by the judge, no force had been used, quite the contrary, and the husband was acquitted on the evidence of the wife. The Attorney-General insisted that he was in a condition to prove that Miss Turner gave her full and free consent to the marriage; that a marriage did take place in Scotland, which, by the law of Scotland, was a valid marriage; that he had the option of proving *aliunde*, by collateral testimony, the incompetency of Miss Turner as a witness against Mr. Wakefield, without examining her at all. Mr. Brougham stoutly protested against his learned friend twisting in the best part of the defence under the colour of giving evidence on this collateral issue; and as it was a matter of practice entirely depending on the discretion of the presiding judge, he decided on requesting Miss Turner to be called. He expressed a strong opinion that the objection would come to nothing.

"You propose to prove that the marriage took place by apparent consent (I know what you mean to prove)—that when they arrived at Gretna Green, this lady expressed no reluctance; but that comes to nothing."

Mr. Scarlett. I mean to show that long before they arrived, from first to last.

Mr. Baron Hullock (in a low tone). Was it before she left Manchester? At that moment, assuming a conspiracy to have been proved, the conspiracy was complete.

Miss Turner was then examined by Mr. Serjeant Cross, and, omitting introductory and irrelevant matter, proved in the most artless yet clear manner the outline of her interview with Mr. Edward Gibbon Wakefield after he had come into the room where she was sitting at Manchester. "I was rising to leave the room, and he requested I would not go. He said he was commissioned by my papa to take me to him. I might be sure it was no slight circumstance that prevented my papa from coming for me himself. That it was the state of my papa's affairs which had induced him to send for me home. I remarked that it was on account of my mamma's illness that I was sent for home. He said that the facts stated in the letter to Miss Daulby were not true; that that letter had been written because they did not wish Miss Daulby to know why I was sent for. He told his servant to tell the other gentlemen to come in. He did not introduce him; he merely spoke of him as his younger brother.

"I stepped into the carriage, imagining that I was going to meet my papa. Mr. Edward Gibbon Wakefield said that if there was no letter at Halifax, and if we did not see my papa there, we must proceed as far as Kendal. We should be sure to find him there. At Kendal Mr. Wakefield read a letter at the chaise window, and his brother looked over it, but I did not see it."

Had Miss Turner been older, it might have excited some surprise that she did not ask to look at the letter herself; but suspicion did not line the countenance, nor distrust overshadow the mind, of a school-girl of fifteen.

"He said that my papa was not there, but was gone forward. We proceeded forward. On the way Mr. Wakefield said that he had received a letter from my papa commissioning him to inform me the state of my papa's affairs. He said that a bank had failed at Macclesfield, Ryle and Daintry's; that my papa had been almost ruined, but that an uncle

of his, who was a banker in Kendal, had lent my papa the sum of 40,000*l.*, that had relieved him for the present; that afterwards the Blackburne bank had failed, and then his affairs were in a worse condition than before; that his uncle then demanded, as security for the sum which he had lent, the estate at Shrigley; and my papa might be turned out of doors any day. He said that it had been suggested by Mr. Grimsditch, I believe, that he, Mr. Wakefield, should be my husband, that then the property would be mine, and that then it would be in my power to turn my papa out of doors if I liked, but of course I should not think of doing it. I did not make any reply to this at that time; this passed on the stage from Kendal towards Carlisle. He adverted to the subject again before we got to Carlisle, and frequently said he was desirous to know what conclusion I had come to. He had said that I should see my papa, and then he said I should give the answer to him. Mr. Wakefield said that my papa was attempting to cross the border; the sheriff's officers were in pursuit of him.

"Just as we were leaving Carlisle, Mr. William Wakefield, after having drawn up the carriage windows, said he had something of importance to communicate to his brother. He said he had seen my papa at Carlisle, and that Mr. Grimsditch was with him. That he was there concealed in a small room at the back of the house. That he had made two attempts that day to cross the border, and could not. He said the persons whom I had seen round the carriage door were sheriff's officers in search of my papa. That Mr. Grimsditch had intreated that Mr. William Wakefield would not stop in the room, or they should be discovered, and that he had taken him by the shoulders and turned him out of the room. He said that my papa requested, if I ever loved him, that I would not hesitate to accept Mr. Wakefield as a husband.

What did you say to that?—I consented.

What induced you to consent?—The fear that if I did not, my papa would be ruined.

Did you believe what he had told you upon that subject?—I did.

The fact of a marriage was thus discreetly slurred over by the counsel for the prosecution; and Mr. Scarlett did not

lessen his reputation, as the most wary of advocates, by the short cross-examination to which he subjected the cajoled young lady, on whose behalf there must have burned the most lively sympathy in the bosom of every lady and of every gentleman in court. He would not risk offending the natural prejudices of each special juror by hazarding a single inopportune question that might lacerate the feelings of one so deeply wronged.

'Will you allow me to ask you two or three questions? I shan't trouble you at any length. You went through a form of ceremony of marriage in Scotland; did not you?—Yes.

And you had a ring.—Yes.

The ring was too large for you, I believe, was it not?—It was rather.

Another was bought for you at Calais afterwards, I believe?—Yes.

You dined in Scotland?—Yes.

And believed yourself the lawful wife of Mr. Wakefield at that time, did you not?—Yes.

And you remained in that persuasion until you were otherwise informed at Calais?—Yes.

Did you write a letter to your mother?—Yes.

Did you use the name of Wakefield?—I did.

When you saw your uncle and Mr. Grimsditch at Calais, they assured you the marriage was void?—Yes, they did.

The case for the prosecution closed with the evidence of Mr. Critchley, the brother-in-law to Mr. Turner, who confirmed the statement of what occurred at Calais, and added two important particulars. "I asked Mr. Gibbon Wakefield how he could commit so flagrant and cruel an act as to carry away a mere child, whom he had never seen. He admitted that he had never seen her before he got to Manchester; that she was represented to him as a very fine girl, and the heiress to one of the largest fortunes in the county; and that he was determined to possess himself of her.

"In the course of conversation I certainly told my niece that I had every reason to believe that it was an illegal marriage, and she exclaimed, 'Thank God for it! It is the happiest intelligence that could be conveyed to me.'"

Having run the chief conspirator to earth, and proved the recovery of his intended victim, it may be well to change the order of the evidence as it was given at the trial affecting the third defendant, Mrs. Frances Wakefield, and introduce, in one connected series, the proofs by which it was sought to establish that she was privy to the whole transaction, and was aiding and abetting it.

Mrs. Brocklehurst, a lady in the neighbourhood, spoke of her making a morning call in February, and expressing a wish for an introduction to Mrs. Turner, in consequence of which they called at Shrigley, when she made particular inquiries respecting Miss Turner. It would be a monstrous straining of suspicion, an extraordinary inference of guilt, to argue any sinister motives for this call and inquiry.

The lady was cross-questioned, with more asperity than the occasion called for, by Mr. Scarlett.

Pray did you ask after Miss Turner too?—Yes, I did.

Did you do so extraordinary a thing as to ask after Miss Turner?—I did not consider it extraordinary.

Very well: did you ask after her?—Yes.

Do you remember asking Miss Davies, when she was going abroad, to call upon your brother at Versailles?—Yes.

You requested that particularly, did not you?—Not particularly: I think I gave her a letter to take. I am not certain. [Here the witness turned round to some lady who was behind her, and said, "Did I Mary?"]

Who keeps your memory in reserve for you?—I quite forgot it myself; I was asking my sister, who sits behind me.

I dare say that at many of the visits you make in a morning a good deal of gossip takes place that you forget?—Very probably.

But is it not certain?—Quite certain.

Mr. Grimsditch also spoke to circumstances unimportant in themselves, but which might be full of meaning: "that Miss Davies called him from his office to see her on horseback in the street: the two Mr. Wakefields were on horseback with her. She asked leave to ride round the grounds at Adlington on their way to Shrigley. On Saturday, March 4th, they met in the street, when Miss Davies said, 'I believe Mrs. Turner is very ill.' I told her that she was very ill;

and then she asked me what was the nature of her complaint. I told her that it was said by the doctors to be a determination of blood to the head, but that from her appearance I thought it had been an attack of paralysis. She then talked about Mr. Turner's going to the assizes as sheriff. I told her he was going to London in a day or two, I thought on Monday evening. She said, 'I think you are a great deal in London, you are probably going with him.' I said I was going, but not with Mr. Turner."

She thus made the two other defendants acquainted with the person of Mr. Grimsditch, and with the grounds at Shrigley. She ascertained the probable nature of Mrs. Turner's illness, as it was stated in the forged letter, and the intended departure for London, on the Monday, of the father and his solicitor. Her connection with the two Wakefields as step-mother might give an innocent character to these communications; she might be made, by their artful inquiries, an innocent participator in their criminal design.

The next witness to prove her guilty knowledge, Mr. Robert Bagshawe, a banker at Macclesfield, stated circumstances of more grave inculpation. On Sunday, March 5th, he was sent for by Miss Davies to her father's house, and asked for a loan of two 50*l.* bank notes, and smaller notes, 5*l.* or 10*l.*, to the amount of 150*l.* or 160*l.* in all. She wanted the money to pay an account of her cousin, Dr. John Davies. The money was advanced, and as she was signing an order on the Manchester Savings-Bank for the sum, Gibbon Wakefield entered the room and asked her if she was signing her will! In the August following Mr. Bagshawe received a subpœna to attend as a witness, and went to inform Miss Davies. "I told her I did not know what I had to do about the business, except the money transaction; that was all that I knew of. She said she did not deny having advanced some of the money to them, because they had some French bills, and could not part with them there. I asked her whether she had informed her father of that money transaction, and she said she had not. I recommended her to do so."

The two large notes were identified, one of them paid by Gibbon Wakefield the day following for the purchase of the

carriage, and the other changed at Penrith on the Wednesday. The relationship of Mrs. Wakefield might explain the circumstance of her borrowing the money for their use, and giving a false account of its destination; but her inconsistent explanation of giving the money in exchange for French bills must have told strongly to her prejudice. Had French bills been actually given, they might have been traced; or had Dr. J. Davies been in such circumstances of temporary embarrassment as to render the notion of a loan on the Sunday desirable, that fact might easily have been proved. The discrepancy between the declared effect of appropriating the money at the time, and that which she stated afterwards, warranted a keen suspicion of her guilty connivance in the fraud, furnishing also as she did important information, and the necessary supplies. To strengthen this suspicion there was further evidence given of the servant returning in a chaise to Macclesfield on the Monday evening, and taking the direction of Dr. Davies' house, as if Thevenot had been sent back on the eve of the abduction for further orders, or to acquire some supplemental information; but this circumstance was too conjectural to hang more than a doubt upon it. Letters written by Miss Davies herself formed a much more suspicious element of guilt, and gave rise to surmises which her affinity with the parties implicated could not satisfactorily explain. The first was addressed to William Wakefield, and read without any explanation of the manner in which it had been obtained.

"Dear William,—Mr. Turner did not come down the night you left: it was a mistake.—My father saw Mrs. Critchley yesterday, who seems very kindly disposed, but she did not know what her brother's feelings would be: perhaps Edward or Madame ought to write to her, touching tender chords. The old uncles have been written to by her wish. Miss Daulby has not yet written to Shrigley, but Miss Turner (the niece) wrote to her yesterday. This is all Mrs. Critchley's information to my father. Ever aff. yours, F.—You must not let a foolish account of the affair get into the papers. It would much annoy Turner, I am sure."

Two other letters addressed by this lady to a friend of

the family, Mr. Randall, Pall Mall, though without date, and evincing great anxiety to screen the fugitives, might receive an interpretation consistent with innocence, from the connections of the writer. The following were the only important passages:—

"I will thank you to send me a line, directed P. O., Buxton, to-morrow, where I shall be. I wish to know whether William is in England. I heard yesterday there would be a warrant for him, and also a hint that a search would be made in Pall Mall for papers, &c. I know it would have been awkward to you to have any which are committed to your care brought forward, as it might implicate you. If you received a communication which might surprise you, you will now know the reason."

"If there could be any means of preventing the paragraph inserted in the Courier, and also one which may have appeared in the Macclesfield Herald, from finding their way into the public London papers; the paragraph in the Courier is, in fact, the only objectionable one. Mr. Wakefield himself would object to any interference with papers, and therefore it is left to Mr. Randall's discretion."

It required the practised skill and self-possession of Mr. Scarlett, in the face of such corroborative evidence, to take the opinion of Baron Hullock whether there was any evidence against Mrs. Wakefield to go the jury.

"I am exceedingly glad to observe, in the progress of the cause, that the evidence against one at least (Mrs. Wakefield) is so exceeding slight, that I trust your lordship will be of opinion I may dispense with the trouble of making a case on her behalf."

The judge decided that there was evidence, that there were circumstances of suspicion, respecting Mrs. Wakefield which he ought to leave to them. The manner in which the counsel sought to clear away the suspicious facts deposed to, and his triumphant tone of explanation, display great artistic ability.

"I assure you I feel as a man and as a father for the respectable gentleman who is the father of this young lady; and I can make every sort of excuse and allowance for any

excess of angry feeling in his mind: I think it is natural, although not laudable—excusable, although not justifiable. Because, when men come into a court of justice, they come for justice, and not for vengeance; and therefore I wish very much that I could have seen less of that disposition which must have existed in the minds of those who were instrumental in getting up this prosecution, which induced them to include a lady in this prosecution, on testimony that is really so—I can hardly use the word slight—but so ridiculous, that I venture to say there are hardly six persons in Macclesfield who might not, with equal justice, have been included in the indictment, on the same sort of testimony. Surely Mrs. Brocklehurst might have been included in the same way, because she had taken Mrs. Wakefield, and introduced her to Shrigley-hall, and she had asked after Miss Turner. The sum and substance of Mrs. Wakefield's offence is this:—that she had, on the occasion of this gentleman's appointment as high-sheriff, and whose nomination to the shrievalty was known about the time of her return, which was in the beginning of February, from abroad, from a visit she had made during her father's vacation,—that she expressed to a lady her regret that she had not called on Mrs. Turner before; and at a season when persons were expecting to be full of gaiety, and the high-sheriff was about to give a public breakfast, or some public entertainment, she was introduced there by that lady: and surely it is not necessary to suppose that this lady was desirous of being introduced there in order to make it subservient to some desperate crime of conspiracy and treason against the family. I dare say you know enough of the female sex to know, that they are desirous of participating in innocent amusements of that sort; and surely it is not necessary to resort to the supposition that this lady was introduced there with any intention to defraud them of their child or their property. Then what was there, in Miss Davies's regretting that she had not been introduced, and there being some expectation of a public entertainment, that she should wish to get an invitation? But then, it is said, she asked after Miss Turner?—Oh, what a crime! What, call on a lady, and

ask after her daughter! Why, I will venture to say that no woman ever called on a mother, more especially at the first acquaintance, without asking after her children. And Mrs. Brocklehurst tells you she did the same thing—that she asked after Miss Turner. What topic of conversation is more natural than that? Well, but there is another thing —it seems that she lent the other defendants money, and she avowed she lent them part of the money she obtained from the bankers. Good God! are you to infer from that that she lent it for this purpose? It is quite plain that she had lent them money, but then are you to suppose they communicated to her their design? Nothing, in my mind, is more irrational than such a conception. My learned friend opened, that he should prove the servants coming back, and having a conference with her; but not a tittle of evidence has he given on that subject. Then there are letters of hers — what is more natural? You will please to recollect her connection with the family, and though at that time the connection was not avowed, it was well known to them she was married to Mr. Wakefield; and what is remarkable, one of those letters which they put in was contained in an inclosure, and they have not put in that inclosure. The letter is addressed to Mr. Randall, whom they don't call to prove he received the letter. Then why are you not to infer that that related to an advertisement in the Courier and Macclesfield papers, of her marriage with Mr. Wakefield? It is too much, I think, on suspicion like this, to introduce this lady into the indictment, who, from the moment it was known that she was introduced into this indictment, has, I am informed, been a victim of the greatest sorrow. She feels that no charge could affect her more deeply, and from that moment to this she has been in a state of agitation, which, I am afraid, has operated on her as a degree of punishment more severe than any Mr. Turner could wish to inflict upon her. I trust, then, I have delivered her from the charge that is made against her, and I shall therefore dismiss from your consideration all further topics regarding those letters, for you must feel the evidence on which she is included in the indictment does not justify her

introduction into the indictment; and therefore you will be disposed, without one single further observation from me, to say she is not in the least guilty."

Mr. Scarlett, before quitting the court, reiterated his assurance at the close of his evidence for the two male defendants. "I feel it my duty to say, with respect to Mrs. Wakefield, that I really do not think it necessary to offer to your lordship any evidence. I think so conscientiously, otherwise I should not say so. I have witnesses, but it does not appear to me to be necessary to trouble your lordship with them."

On behalf of the male defendants, Mr. Scarlett addressed the jury in the tone of one annoyed at his case, and almost petulantly determined to disclaim all attempt at oratorical effect. "I propose to trouble you very shortly on this occasion. I am aware that this cause has excited great public expectation; but certainly, as far as I am concerned, that expectation, upon anything I have to urge, will be disappointed." After an episode on the merits, or rather the demerits, of the late Attorney-General, Sir John Copley, whose elevation to the Rolls had prevented his conducting the case for the prosecution, and denying the good sense of the compliment that he was independent of all parties, the ready inference to be drawn by the world from that observation being that he was open to all parties, a topic very foreign to the regards of the jury, but intimately connected with his own feelings, the counsel stooped to the irksome necessity of speaking on the subject of his defence. "No man shall ever place me in a situation, either in this court, in public, or in private, to vindicate an act of immorality or an act of injustice. My duty, as an advocate, is to give my humble efforts to the administration of the law, such as it is, and it is not my duty to endeavour to prevent it. If, therefore, my learned friend takes an issue with me, of whether Mr. Wakefield or his brother can at all be justified in the measures they appear to have been taking, by abstracting this young lady from the school where she was, undoubtedly, neither this Mr. Wakefield, nor that Mr. Wakefield, nor any man in the universe, shall call on me to maintain the affirmative, that is to say, that the parties who did that are innocent. I am

therefore neither called upon, nor am I desired, to do that. Mr. Wakefield has himself admitted, as you have heard from the witnesses who have been examined to-day, that the transaction was wrong; and however the follies and fashions of men may lead them into that which they cannot justify in a court of justice, it is impossible for any man to advance any thing in palliation, much less in justification of that act."

Having thus neither attempted to justify nor apologise for the first part of the transaction, (the adroit advocate knew that to be beyond the limits of even his powers of persuasion,) he took up the case at Manchester, and from the circumstance of Miss Turner being a girl of lively apprehension, well acquainted with the locality, having two friends living at no great distance from the hotel whence she was driven, from her gaiety on the road, commencing at the first stage, from her presumed knowledge that the carriage was not going to Macclesfield but to Delph; he sought to qualify the offence by the artful suggestion that the lady was speedily undeceived and afterwards a willing party to the deception. She is legally married with her own free consent, and "there's an end on't."

"I neither express nor feel any satisfaction or pleasure at it, far from it. I have no feeling on the subject one way or the other, but I shall prove to you the marriage is clearly legal. Miss Turner did not desire or wish to return back to her father; after she got into the carriage, and before she got the first stage, she gave her full and free consent to the marriage, and knew what was going to happen. All these circumstances which I have stated we have thought it proper to bring witnesses to prove, for the purpose of making a case, if it should become necessary, and which never would have been made at all but for the declaration that the marriage was illegal." Instead of a laboured peroration, Mr. Scarlett concluded, as if in haste to wash his hands of the business, with a tart answer to a remark from the judge. He seemed oppressed with the hopelessness of his defence; and the clear opinion of Mr. Baron Hullock dispelled at once the forlorn chance of his remarks on evidence making any impression on the jury. "I shall prove by the law of Scotland, and by the law of England too, that this is a legal marriage."

Mr. Baron Hullock. That is, a marriage by banns, by the law of England.

The Attorney-General. I have now stated what I am instructed to do, and the rest I shall leave to you under his Lordship's direction.

Mr. Baron Hullock. I am of opinion that the evidence you have opened, except that which goes to show the validity of a Scotch marriage, is quite immaterial to the present indictment. I consider that the offence stated on this record, if it be satisfactorily proved to the jury, was committed when they were at Manchester, the moment they left Manchester, and it is no matter what inducement was used afterwards, or however efficient that inducement was, however prevailing the promise, or whatever may have been used afterwards to induce her to acquiesce in the marriage, that that will not alter the nature of the offence. Whatever was done afterwards may alter the nature of the punishment, may alter the quantity of punishment; it may be brought forward on that occasion. I don't mean to say it may not — but I shall tell the jury it is no issue in this cause, and ought not to bear at all on this question. If you feel there is anything in it, Mr. Scarlett, I will hear the evidence.

On the discussion that ensued it was admitted that the count for conspiring to carry her away by force, and marrying her against her consent, must be abandoned. A sharp dialogue ensued between the judge and junior counsel on the evidence proposed to be called.

Mr. Coltman. I apprehend, my Lord, the evidence will have a material bearing on the question of marriage.

Mr. Baron Hullock. Not in the least.

Mr. Coltman. I understand the doctrine of the Scotch law ——

Mr. Baron Hullock. The doctrine of the Scotch law will not sustain you. I only mean to suggest that, in my view of the subject, that evidence is not now very material. I don't, by anything I say, wish to prevent you from exercising your discretion on the subject, certainly not.

Mr. Coltman. We consider it to be very material in several points of view, my Lord.

Mr. Baron Hullock. Very well, I only wish you may make it so.

This discretion was then exercised, and the sound sense of the judge verified in the motley assemblage of witnesses, landlords, post-boys, and chamber-maids, who were then summoned —

"white spirits and grey," —

with all their trumpery, to show the liveliness of the young lady. Their testimony amounted to this, and no more. She might have sent a message to her uncle who lived two or three hundred yards from the Albion Hotel, had she possessed the presence of mind to think of it. She actually — a positive fact — shook hands, according to the waiter, on first meeting Mr. Wakefield. They were in such spirits in the carriage that the ostler asked the voluble driver whether he had got players with him. He supposed it had been a wedding. At Settle they had gingerbread, and she laughed loud enough for two. She played at drafts at Carlisle with Mr. William Wakefield, and the post-boy who drove them to Gretna saw her at the wedding turn round "as if partly to meet Mr. Gibbon Wakefield with a kind of kiss as might be."

The sardonic countenance of Serjeant Cross lost its cynical expression, and his iron features relaxed at the trifling character of such frivolous testimony. He cross-examined the several witnesses with rough contempt.

Well, did they not quarrel or fight? — No.

My friend has asked you every question, but whether the gingerbread was good; was it good? — Very good.

She appeared to you to be in as good spirits as a young lady would be in going from school to see her parents; did she? — She was in very good spirits; I thought they were brothers and sister.

And you actually saw her smile, did you? — Yes.

Mr. Serjeant Cross. Indeed!

The landlord at Gretna and his daughter having spoken to the cheerful and affectionate manner of the bride — it was the most natural thing in the world that she should seem cheerful and affectionate, — the celebrated David Laing the

blacksmith was called to prove his marrying the couple on the 8th of March. He appeared to be very old, very deaf, and very illiterate. Ushered in as a gentleman residing at Spring Field near Gretna Hall, he spoke to his finding two gentlemen, "as it may be," and a lady at Linton's, and thus showed his qualifications for officiating as priest: —

What did the gentleman say to you? — Sir — what did the gentleman treat me with?

No. When you got to the inn, you say you found two gentlemen and a lady there? — Yes.

What did the gentleman want you to do? — He wanted me to do what I had done to many a one before.

Was that to marry him? — To join them together — to join hands, and so on.

Did you make a bargain with the gentleman to marry him? — Yes, I did.

Was that bargain made in the presence of the lady? — Yes.

Did she seem agreeable to it? — Yes, perfectly; she had no objection.

Did you marry them in the usual form in Scotland? — In the Scotch form.

Was there a ring produced? — There was, sir.

Was it put on the lady's finger? — It was.

By whom — by the gentleman? — By myself.

Now, how did the ceremony conclude? — They seemed both agreeable to join hands, and take one another for man and wife.

Well, what was the end of the ceremony? — Why, I wished them well, and shook hands with them, and so on.

Well, was there a salute? — Yes, they both embraced one another, and seemed to be very agreeable, apparently.

Did you ask the lady for any thing? — I told the lady that I generally had a present from them, as it may be, of such a thing as money, to buy a pair of gloves.

Well, did you get any from her? — I did, sir: she gave it me with her own hand; but where the lady got it from I cannot say for that, you know.

What was it you got? — A 20*s*. Bank of England note.

Well, did they sit down together afterwards? — Mr. Wakefield asked me what sort of wines there were in the house, and I told him there were three or four different sorts of wine, with the best of *shumpine*. He asked me which I would take, and I said *shumpine;* and we had a bottle of *shumpine* — they were going to dine.

Were they in good spirits after dinner? — Yes, they were in the very best comfortable spirits.

Both the lady and the gentleman? — Yes.

The next answer, "it was done in the old ordinary form of the church of Scotland," roused the ire of Mr. Brougham, who thus roughly shook this vulgar and illiterate trafficker in clandestine marriages.

Cross-examined by Mr. Brougham. What do you mean by the ordinary form of the church of Scotland, when it had nothing to do with the church? — That is the way it has been done for centuries.

Are you a Scotch clergyman? — No, I am not.

What are you — are you any trade at all? — Nothing at all.

Do you mean to say you never were an ostler? — Me an ostler! No.

How long have you been engaged in this traffic of making this sort of certificates? — Eight and forty years.

How old are you? — I am beyond seventy-five.

Well, before the last eight and forty years what did you do to get your livelihood, — that is my question? — Why, I was a gentleman — sometimes poor and sometimes rich.

Well, when you were poor, what did you do to get your bread — what occupation did you follow? — I followed many occupations.

Let me hear one of them? — I was a merchant.

What do you mean by a merchant — a travelling merchant — a pedlar? — Yes.

Well, now I come back to what you call the marriage. What do you mean by this being the common form of the church of Scotland — do you mean to say that nobody is ever married in Scotland by ministers? — Yes, they are.

Is not that the general way? — No, not the general way altogether. If you go before a person and own yourself to be man and wife, that is the way to marry in Scotland, in general.

The re-examination of Mr. Scarlett, though clever and amusing, failed to set up this performer of what he called *un*regular marriages. "It may be an unregular mode," he said sturdily, "but it is right still."

You married these in the regular mode, did you? — I married them as many a hundred has been married before; and I have been in the courts both in Edinburgh and in the city of Dublin, and my marriages have always been held good.

What form of words do you use? — Well, you come before me and say —

No, I don't want to be married; but suppose any body did, I want to know what form of words are used. Do you make any declaration between the parties? — I ask them whether they take one another for man and wife before myself and two witnesses: that is the mode in Scotland.

Well, when they say that, do you make any declaration, or what do you do? — Why they embrace one another, and *so and so.*

Tell us what the "*so and so*" is. I don't want to be married, but some of my friends here do, and they want to know the ceremony. What is the "*so and so;*" what do you say? — After they take one another by the hand, I say, "Now I declare you *so and so.*"

What is it you declare? What are the words your use? You declare them what? — I declare them to be man and wife before the witnesses, and *so and so:* that is the Scotch rule.

This so-and-so witness was succeeded by Monsieur Quillac, who came from Calais to prove that Monsieur and Madame Wakefield passed as man and wife, and went to the play together. He also produced a plan of the apartments, a saloon and two chambers, with each a bed. This production of the plan could have no other meaning than a covert insinuation, where more was meant than met the ear, — an at-

tempt, perchance, to deter the aggrieved parent from following up the prosecution with a bill for divorce.

The most important witness for the defence was then placed in the box, Mr. Duncan M'Neill, an advocate of eleven years' standing at the Scottish bar, who proved himself to be thoroughly well acquainted with the Scotch law, as it relates to the contract of marriage, and, by his perfect mastery of the subject, completely refuted the silly prophecy of Serjeant Cross, that "if any gentleman bearing the name of a lawyer should exhibit himself in a court of justice, there to prove such a thing as a legal marriage, he would (Oh lame and impotent conclusion!) never hear the last of it as long as he lived." He stated, "taking the facts as they had been spoken to, to be accurate, that the proceeding that had been stated to have taken place at Gretna, was all that was necessary to constitute a marriage if it stood by itself without other evidence, and that he had not heard any thing that took away, in his opinion, from the valid effect of that ceremony so performed, taking into consideration the evidence that was given by Miss Turner, if she was Miss Turner."

Mr. Brougham cross-examined his brother professional with a marked knowledge of the law of Scotland on the subject, but met with at least his match, and playing at foils experienced some sharp rubbers at the hands of his learned brother from the other side of the Tweed.

During the eleven years you have been at the bar, have you answered many cases on questions respecting the validity of marriages? — Not many: I have answered some, not many: as many, I suppose, as persons of my standing at the bar.

Gentlemen come, as we know, at the Scotch bar slowly into practice? — That is a comparative question. I don't know how they come into practice at the English bar, and therefore I cannot compare it.

Mr. Baron Hullock. It is the same here.

Do you mean to represent that, on the subject of marriage, the law of Scotland is perfectly clear, and without doubt? — I think it now is — I know the matter was a good deal controverted some time ago, but I think now it is settled.

Don't you know, sir, that three of the present judges now on the bench in Scotland, have sworn that, in their opinion, a mere consent *per verba de præsenti* does not constitute a marriage? — don't you know that? — I know that they have, and that several of the judges now on the bench have sworn it does constitute a marriage, and that in the case referred to, it was decided to be a marriage.

Not in Scotland? — But by a decision which was held to be law in Scotland.

Don't you know that there is a very great difference of opinion between the Scotch lawyers on the subject? and have they not imported an English decision to help them to what the Scotch law on the point is? — Do you mean the case I have now alluded to?

Yes. — I know that that is considered an important case.

Don't you know that it is now considered as settled law, and that ever since that case it has been so settled, but not before? — I did not say it was not the law; I said it was controverted, but not since the case of Dalrymple and Dalrymple, and M'Adam and Walker.

Is not the Civil Law of high authority in the Scotch law of marriage? and does not the Scotch law import into the law of marriage the principle of the Roman law, *consensus non concubitus facit nuptias?* — It does: and we long used to go by the Civil Law, but we now think we have cases on which we can proceed.

Are you not aware it is a principle in the Civil Law, that a contract is void "*cui dolus dat locum;*" that there is a principle in the Civil Law which voids a contract of that sort? — There is such a general principle.

Are you not aware that there is also a Prætorian Edict, very well known in the Civil Law, "*Pacta conventa quæ neque dolo malo, neque adversus leges, neque quo fraus cui earum fiat, facta erunt servabo?*" — I don't recollect the particular dictum, but I think there is a dictum to that effect.

Are you not aware that by the Civil Law — by one of the Novels of Justinian, a person by fraud taking away a young woman, and by fraud marrying her, is guilty of a capital offence? — I believe he is, but I don't recollect.

But you believe there is such a law of Justinian, which is parcel of the Civil Law? — Yes.

Is there in the law of Scotland any statute, or is it at common law an offence to inveigle and take away an heiress for the purpose of marrying her — was it ever punished as a capital offence, for instance? — The forcibly taking her away has been.

But I mean inveigling her by fraud? — I don't know of any case — certainly there has not been one for centuries. I should say no capital offence.

But is it an offence to inveigle and take her away? — I don't know of any case being prosecuted in a criminal court.

Suppose now (I am going to put a case), suppose that it were an offence of a high nature, punishable by transportation for life, and that it had only within three years ceased to be a capital offence by the law of Scotland to inveigle away a person for the purpose of contracting a marriage with her,—suppose that was the law of Scotland, should you conceive that the marriage, in such circumstances, solemnized by the law of Scotland, would be a valid marriage? — It is very difficult to form an opinion upon that. I should say by the law of Scotland, if a person inveigled away another for the purpose of contracting marriage, if that person afterwards freely gave her consent to be married, and was married, that the marriage is a valid marriage; and I am so taking it in your qualification of its being a capital offence to inveigle her away.

The last answers of the Scottish lawyer appeared quite decisive on the validity of the marriage according to the Scotch law, defective and even pernicious as that law might justly be reputed.

Did you ever know an instance of a person inveigled away, and told it was necessary to marry A. B. in order to save her father from the sheriff's officers, and a marriage, under those circumstances, takes place, that the marriage was held to be a valid marriage? — I never knew a case in its circumstances at all similar to this; but I know of no doctrine in our law which lays down that any deception short of

a mistake in the identity of the person invalidates the marriage.

Mr. Scarlett could safely assume a bold and decided tone in re-examination.

I will ask him whether by the Scotch law any deception short of identity is sufficient to invalidate the marriage? — I don't think it is, and I don't find it stated in any of the authorities; some of our authorities doubt even the identity is sufficient. Mr. Wallace, a most eminent writer, doubts it.

Mr. Scarlett. I should not doubt that myself, I own!

Suppose a woman of abandoned character makes a man believe she is perfectly modest and chaste, and a marriage takes place under those circumstances, would not that marriage be a valid marriage? — That case was expressly put by my Lord Stowers, and he said it would be a valid marriage.

Mr. Baron Hullock. Is there any decision to that effect? Has such a case ever been questioned? — No, I am not aware that it has. Lord Stowers, who is held to be the best authority, and the authority of other writers, all concur in that respect, with the exception of Lord Benington; and there is no doubt the judges would be bound by that.

This false pretence would not apply to the case of absolute intoxication, that being the same in Scotland as the case of no consent. The law was thus shortly defined: —

Then I wish to know whether the law of Scotland is this, that if there is an actual consent to the marriage by a party understanding what she is about, that is sufficient? — Certainly, I have no doubt of it at all.

Although that consent may have been procured by false representations? — Certainly, I have no doubt of it.

The conviction of Mr. M'Neill was confirmed by the act of parliament that afterwards declared the divorce, and could not be shaken by the indignant perversion of his meaning in Mr. Brougham's interruption.

A marriage by a drunken pedlar! Is there any pretence for saying that a marriage witnessed by a drunken pedlar at an ale-house before a post-boy, is a marriage according to the service of the church of Scotland? Is it not an offence according to the church of Scotland, and would not a clergy-

man be censurable for committing such an illegal act? — Yes, he would; but the marriage is still legal.

Baron Hullock then pronounced his opinion in favour of the admissibility of Miss Turner's evidence. "Even if the lawful wife of the defendant Gibbon Wakefield, she is a competent witness against her husband in respect of any charge which affects her liberty or her person. She may file articles of the peace against her husband. She may prosecute him for a misdemeanor, as was done in the case of Jagger, at York, before Mr. Justice Lawrence, which was the case of an attempt by the husband to poison his wife. It was done in the case of Lady Strathmore against Mr. Bowes and others; and in various other cases that have occurred since that time. I think it would be a strange incongruity in the law of the country, with respect to the practice of the admissibility of evidence, if it was to shut out the evidence of the only individual who was competent to speak to the facts of the case. It should seem that she is a witness *ex necessitate*, because, if she was not a witness, injuries might be committed with impunity; the law of the land might in fact be violated with the greatest possible ease with impunity; the husband would be allowed to commit the grossest acts of violence without punishment, if the wife was not allowed to be a witness to prove them. And therefore, if the marriage be wrong, she is admissible; and if it be right I think still, in point of law, she is, under all the circumstances of this case, a competent witness."

Serjeant Cross replied with animation and vigour, for his spirit as a high-minded gentleman revolted at the meanness of the defence, and the coldness of the lawyer was kindled into something like eloquence by his feelings as a man. "I own I did expect a great deal of false testimony — a great deal! for I did not think there would be any difficulty in persons who could demean themselves as the defendants are proved to have done, who have committed a forgery, and by that means have got possession of the person of the young lady in a way in which, if they had obtained a bale of goods by the same means, they would long ago have been transported as swindlers. The attention of the jury had," he said,

"been totally carried away for the last five hours from the real question. Did the three defendants conspire to carry away a young female from school with intent to marry her to one of the culprits. Did they so conspire, and when was the crime of conspiracy, if committed, completed and brought to its final termination? When that letter was delivered at Liverpool, and the young lady conveyed away in the carriage, — then was the crime that is now before you committed, — then had that crime attained its full consummation; but this case has been defended to-day with a degree of hardihood and folly, that I never witnessed in the whole course of my experience. We charge these defendants with a conspiracy to commit an atrocious crime, and their defence is this: — true it is that we committed it, we set about it, and we completed it — that is the defence; and there is no other defence offered to you on the other side, but that the crime which we charge these defendants to have conspired to commit, they have, in fact, perpetrated under circumstances of singular atrocity — that is the defence. But, Gentlemen, this atrocious offence is aggravated by a circumstance which I could not believe that any man of human feeling could have pressed into this case. Notwithstanding the confidential letter which one of these defendants wrote to his confederate, asserting, what is the fact, that there had been no violation of the person of this much-injured young lady, yet have they the audacity to come here, in the face of the public, and to insinuate that she has been defiled. Merciful God! God forbid, I say, that I, in the exercise of my profession, should lend myself, for a moment, to so atrocious an insinuation! — What! have they not dared to cross-examine the witnesses, to know what happened at Penrith and at Calais, and why, but to stain, for ever, the injured lady who has been the victim of this crime, and to wound for ever the feelings of the afflicted family! to belie that which one of these defendants recorded in his confidential letter to the other: — that he had never lived with this young lady but as a brother with a sister, you have had under his own hand solemnly declared! Does not all the evidence confirm that? Were there not separate beds at Penrith on the night of this pre-

tended marriage? Were there not separate beds all the time at Calais? And is there any pretence for that horrible and audacious insinuation which, whatever may be your verdict, I trust will never be forgotten by the court which is to pass judgment on these delinquents? and I trust it will largely recoil on them when they are brought up to receive that judgment."

Disdaining to discuss further the guilt of the two Wakefields as too clear for question, Serjeant Cross addressed himself to the only doubtful part of the case, the guilt of Miss Davies, contending with much vehemence that she must have been the suggester and contriver of the plot, as she lived at Macclesfield in the vicinity of Mr. Turner's family, and but for her the other two defendants would never have known there was such a person as Miss Turner in existence. He insisted that she furnished the means, the *vectigal* for the abduction, and communicated the absence of the father. On the announcement of the marriage, so far from displaying abhorrence at the transaction, and indignation at herself being made a tool of, she was corresponding secretly with her confederates, and suggesting the suppression of papers that might furnish some evidence of guilt.

Baron Hullock commented most temperately on this, the single difficulty, whether Miss Davies had conspired with the others.

"Nothing so natural as her inquiries at Shrigley after Miss Turner — her interviews with Mr. Grimsditch had an innocent and probable object, leave to ride through pleasant grounds. The distance from Macclesfied to Shrigley was five miles, one of those short distances which a party would find a pleasure in visiting in a morning's ride. Even the obtaining the money, when their affinity is taken into account, might be explained; a plausible story of the son-in-law might induce the loan." But she did not adhere to the story she had told in the first instance, when she obtained the money for the purpose for which it was wanted; and this inconsistency weighed heavily against her in the mind of the truth-telling judge. Even here an excuse might readily be suggested, that having borrowed the money for the Wake-

fields with an injunction of secrecy in the first instance, she sought to explain the loan, on learning that the bank-notes were traced, by another fiction of exchanging them for French bills, and thus clearing herself of all guilty knowledge. The falsehood and conflicting statement brought their deserved punishment. Baron Hullock thought there was nothing in the letter to William Wakefield which showed any previous concert, or any thing to implicate her in any criminal proceeding. It was very natural that she, as step-mother, should be applied to for her advice and assistance. The contents did not prove that she was accessory to what had taken place before and at Manchester.

This being the whole case against Frances Wakefield, the jury interrupted the judge, when detailing the evidence against the male prisoners, with an intimation of their opinion that it was unnecessary to go further, but were absent three quarters of an hour before returning with a verdict of guilty against her. With this verdict of guilty the prosecutors very properly remained content, and Mrs. Wakefield was never called up for judgment.

NOTES TO GIBBON WAKEFIELD'S TRIAL.

Note 1.

A fine rhetorical use of the father appearing in court to seek redress for wrongs done to his child, was made by the eloquent French advocate Monsieur Berryer, in the prosecution of La Roncière for assaulting Augustine De Morell. General Morell sat by the side of De Berryer, and as he addressed the jury he described the atrocity of the crime and the frantic grief of the parents with great eloquence. Then pointing to the General, who was sitting there in a kind of vacant stupor, he exclaimed, "Et ce malheureux père, il est là; il est là, à côté de moi; mais il ne m'entend pas, quand je vous raconte ce qu'il a souffert!" This sally was much applauded.

Note 2.

"The law of marriage to this hour," says Mr. Croker in his edition of Boswell (1830), "is vague, obscure, and contradictory." One law for England; a different one, or rather none at all, for Ireland*; and in Scotland the monstrous doctrine of legitimation by subsequent marriage.

* This has been amended by statute 7 & 8 Vict. c. 81.

NOTE 3.

The trial of Swensden, for forcibly taking away and marrying Mrs. Pleasant Rawlins*, is curious for its traits of manners. The bailiffs stopped the carriage in which she was riding in Dartmouth-Street, and told the people about, it was an arrest of a cheat that owed money to tradesmen. As they jumped into the coach and carried her away, they called her jade and slut, and bid her pay her debts, and said, "Put on your mask, you jade, for we will have no mob to rescue you." She was timid and obeyed, and put on her mask. Swensden then came to the bailiff's house, and said, "What is the matter with you?" I said, Mrs. Rawlins told the Court, "Enough is the matter when I am arrested for 200*l.* and owe no man a penny." The parson then came upstairs, and said, "I hear there is a couple to be married." He asked no questions, but told me if I did not marry this gentleman I should be sent to Newgate, and ruined for ever.

Lord Chief Justice Holt (to the Parson). Did you marry them as soon as you came into the room?

Parson. Almost as soon.

L. C. J. Do you think they should grant licenses to marry in a tavern, and out of canonical hours?

Parson. I will never do it again.

L. C. J. What entertainment did you get?

Parson. Before the marriage the clerk and I drank a pint of wine in the first room.

* State Trials, vol. xiv. p. 559. 8vo ed.

THE TRIAL

OF

HUNTER AND FOUR OTHERS,

COTTON-SPINNERS IN GLASGOW,

BEFORE THE HIGH COURT OF JUSTICIARY AT EDINBURGH,

On Wednesday, January 3. 1838, and seven following Days,

FOR CONSPIRACY AND MURDER.

Judges Present: The Lord Justice-Clerk, Lord *Mackenzie*, Lord *Moncreiff*, Lord *Cockburn*.

Counsel for the Crown: The Lord Advocate, *Murray*, the Solicitor-General, *Rutherford*, John Shaw *Stewart* and Robert *Handyside*, Esquires, Advocates-Depute.

Counsel for the Pannels: Patrick *Robertson*, Duncan *M'Neill*, Alexander *M'Neill*, James *Anderson*, and H. G. *Bell*, Esquires, Advocates.

On the night of Saturday the 22nd July, 1837, as John Smith, a cotton-spinner at Glasgow, was returning home with his wife from making their purchases at market, he was shot in the back, two bullets entered his body, and he fell mortally wounded. At the point of death he declared his conviction that he had been murdered by some of the old spinners, on account of his having taken work from Messrs. Houldsworth's, whose hands had struck for an advance of wages. Large rewards were immediately offered for the discovery of the assassins, 500*l.* by the master cotton-spinners of Glasgow, and 100*l.* by government, but in vain. None came forward to volunteer information, the love of life proving stronger than the greed of gain. This murder formed the crowning act of other desperate enormities, which

had occurred during different strikes in the cotton trade, and been attributed to the same gigantic conspiracy, the Association of turn-out Spinners, whose leaders had hitherto remained undetected. For presuming to work at reduced wages, men had been fired at and wounded in open day, on the green in Glasgow, in the presence of scores of fellow labourers, none of whom would protect the assailed, or inform against their cowardly assailants.

To deter the masters from taking fresh hands, fire-balls had been thrown into the mills, and canisters ignited, full of blazing combustibles, flung into the bed-rooms of private dwellings. The houses of workmen were invaded at dead of night, and the inmates forced to take an oath that they would discontinue work in future on pain of death. Women being employed at the Broomielaw Mill, the cellar where one of them lived was broken into, and Widow M'Pherson so brutally beaten and wounded that she died in a few days, her life being taken in mistake for her daughter's. Vitriol was thrown on one Cairnie, a *nob-stick*, the technical name of reproach for one who worked at reduced rates during a strike, and he died in extreme torture. The execution of the culprit could not deter the banded workmen from further outrages. Masters were compelled to wear a mask after dusk to protect them from this horrid practice of throwing vitriol, and were in the habit of receiving threatening letters denouncing a painful and sudden death if they did not take back their hands at the wages they chose to impose. At length Mr. Alison, the Sheriff of Lanarkshire, the esteemed author of the History of the French Revolution, determined, on the murder of Smith being officially reported to him, at whatever risk, "come what, come might," to crush this fearful combination. Accompanied by Captain Miller, and a strong police force, he arrested fifteen of the leading conspirators at their committee-room on the night of Saturday, July 29, only four days after Smith's death, and seized all their books and papers. Early in the following week the strike was at an end; the deluded followers, after four months of fearful suffering and privation, returned to their work, and life and property were once again secure from molesta-

tion. The ex-office bearers, and M'Lean, their supposed tool in the murder, were detained in prison till the following January, and then put on their trial. A few witnesses had at length ventured to come forward with revelations of the nature, character, and proceedings of the Association. Protected by secret oaths and irresponsibility, it had become as formidable to the honest working classes, as those *Vehmic* tribunals of the middle ages which, connected by an invisible bond and sworn to silence, smote with fear guilty tyrants, and inflicted death by the dagger and the cord with a hidden, irresistible agency, like the "pestilence that walketh in darkness."

All these deeds of atrocity and blood, which had, for twenty years, disgraced well-educated Scotland, were traced at length to that most mischievous association of the cotton-spinners at Glasgow, with their ramifications in the three countries, comprehending hundreds of thousands of workmen. At the will of a secret and self-elected body whose managers were unknown, these Trades Unions tyrannised over all who were obstinate enough to be content with the wages given, and ready to work. The Union constrained those who preferred labour to become pensioners, idle hangers-on of the Association, to receive a precarious amount of alms instead of the wages of independent industry, for their own and their families' support. "The wretched victims of this tyranny," said Mr. Alison, "all got deeply into debt, if they had any credit, and if they had none sunk into such habits of idleness, profligacy, and intemperance, that great numbers of them have been permanently rendered mere nuisances and burdens to society. The cotton-spinners' strike alone instantly threw six or seven thousand women and children out of employment for a long period; 8000 human beings were retained in a state of destitution and wretchedness for four months, merely at the pleasure of fifteen men."

Some of their willing followers had grumbled at the amount of wages when earning 30*s.*, others 35*s.*, a week. After they had struck for an increase, their average aliment was reduced to 3*s.* a week, and afterwards to the miserable

pittance of 9*d.* weekly; not sufficient, in their own homely language, to keep flesh and blood together.

"And Want looked eager from the mother's eye."

But the change wrought by starvation and idleness in their moral natures, forms a far more fearful subject of regret than the decay in their physical condition. Workmen who had joined the union, honest, manly, frank, open-hearted, humane, when they had taken secret vows on Ashdod and Armageddon, and had ceased to earn their daily bread by daily labour, attributing their misery to the firmness of the master manufacturers, degenerated into cowardly, cruel, covert assassins; the more they were crushed with grinding poverty, the more they hardened their hearts and grew desperate and callous. Their natures became wolfish: no act was deemed too cruel, no craft too ferocious to compass their ends. They yearned for some deed of blood which might convulse with terror the mill-owners, and compel them to yield. "Is nothing done yet?" was the cry of complaint when another day passed over in comparative quiet. They talked with complacency among themselves in their cups that Smith would be shot that night! Their senses had become deadened to the sufferings of others from the intensity of their own. Instead of shrinking from

"The pale and midnight murderer,"

they regarded him as the fitting instrument of vengeance, and looked upon his victim with as little compassion as the soldier contemplates his fallen enemy in the field of battle. They were compelled to give way at length, but not till, corroded and vitiated, they had proved conclusively that there was no crime which combination rising into conspiracy could not instigate and perform. The effects of this melancholy strike were most emphatically mischievous to the workmen themselves, the first-fruits exhibited in poverty, drunkenness, fever, and crime.

The hardships inflicted by this secret body were such, that if the law of the land inflicted a tithe of it there would be speedy rebellion. According to the statement of Mr. Alison, the total loss sustained by Lanarkshire between the different

strikes was half a million. Between 20,000 and 30,000 young persons of both sexes were thrown into compulsory idleness for many months, almost all accustomed to high wages, and, too often, to habitual intemperance. The funds for their aliment grew less and less; each week they sunk into deeper penury, and the starving pauper rushed recklessly into crime. Instead of seven prisoners for trial, as at the preceding winter gaol delivery, sixty-eight were committed, ten times as many. The inmates of the infirmary and hospital crowded there in numbers still more appalling; fever and disease crept stealthily in the rear of combination, and gleaned a copious harvest of death in the weakened victims of enforced want.

It only required the publicity of a long and important trial to prove how iniquitously the hard-wrung pittance had been extorted to feed idle agitators; to show that the strike of the trades unions, though nominally against the masters, was in reality against themselves, nominally for the good of the working classes, but in dark reality producing want, and hunger, and nakedness, teaching cruelty and encouraging guilt—to demonstrate that the labouring men were uniformly defeated, with a great loss of time, the total loss of wages, and severe distress. When the curtain had drawn up for the performance of this singularly dramatic trial, it set forth a series of the most fearful tragedies ever enacted by thinking and misguided men. The stern truth here revealed on the self-inflicted woes of the working classes appeared more sad and shocking than the dreariest horrors of fiction, the moral and physical evils of combination were made manifest, contagious as a miasma, and deadly as the plague. The guilt of actual participation in the murder could not be brought home to the prisoners, and the formation of the secret committee was left in doubt, owing to the strange and irrational rule of the Scottish courts that no question can be asked in re-examination. There being two meetings held at the same tavern on the same night, in one of which only the committee was chosen, the witness could not be recalled to explain the apparent inconsistency.

Lord Brougham, in the following month, presented a pe-

tition to the House of Lords from three delegates of the Cotton-spinners' Union at Glasgow, praying for a remission of sentence. He proposed to demonstrate, by an ingenious hypothesis, "that when they retired, the majority of the jury must have been for an entire acquittal, for they were out three hours; and the result was, that by a verdict of eight to seven, the narrowest possible majority, an offence of the most venial character was proved to have been committed. Now it followed demonstratively from that circumstance that, when they first went out, they were not of that opinion, for if they had been, they would have been glad, after a tedious inquiry which had lasted eight days, to have called the roll, and retired to their different occupations. It was clear to demonstration that one of the eight had been argued over, and that the verdict was thus decided."

Lord Melbourne protested stoutly against such subtle arguments being ever admitted. "They only proved the inconvenience of the law of Scotland in not requiring unanimity. If they were to reflect on the length of time the jury took to consider their verdict, and the time they were out, and to make these circumstances raise a presumption for attacking the verdict, there would be no end to such proceedings."*

Lord Brougham also took an untenable ground for mitigation of punishment, that they could only have suffered three months' imprisonment in England. For the common-law conspiracy they could not, as in Scotland, have been transported for seven years, but might have been imprisoned for three or five years, or even a longer term. In practice the usual maximum of imprisonment is now two years. Mr. Wakley also moved for a committee of inquiry in the House of Commons. In the course of an interesting debate, Mr. O'Connell declared that the House must give protection to the labourer to enable him to dispose of his labour freely. The workmen were not entitled to wages out of capital, but out of profits, and if their employers made no profits, the wages must decrease. He mentioned the fact of "a workman being assassinated in the presence of twenty persons on

* Parliamentary Debates, 3d series, vol. ii. p. 936.

coming into Dublin across the canal bridge, because he had dared to work in defiance of the rules of the combination. The Unionists, who paid the murderers, did not individually commit the crimes, but they contributed by payment to the commission of crimes, from which individually they would shrink. In Cork no less than thirty-seven persons had been burnt with vitriol, and seven murders committed in Dublin. On Thursday last the house of a timber merchant was set on fire, after he had received twenty-two notices."

These appalling facts proved that, though subdued for a time in Scotland, the monster grievance of the age continued to prevail in the sister country, and as one effect of selfish, unthinking combination, it has banished several manufacturers from the capital of Ireland, and from Belfast. In England the besetting sin of trades unions has traversed the entire extent of our manufacturing districts, and flourishes in this educated age more than ever previously. It threatens, if uncontrolled, to deprive the master of all choice as to the persons to whom, or the services for which, payment is to be made, or even the amount of that payment. A greater problem there exists not, for the consideration of the statesman, than how to accommodate the profits of trade with the protection of labour; how best to rescue the master from the conspiracy of his servants, and to save the workmen from themselves.

It is the custom of the Scottish courts, instead of an opening speech by the counsel for the prosecution, explaining to the jury, in dispassionate language, the facts of the case, to reserve all speeches to the close, and, if any explanation be required, to insinuate it in arguing the relevancy of the criminal letters. These, which were most voluminous,—a very winding-sheet of law, to apply the energetic metaphor of the late Mr. Justice Williams,—were amended, after a most elaborate discussion, which it is unnecessary to abridge, as the decision turned on the principle of Scottish pleading, and would be uninteresting to the general reader. The prisoners were charged with conspiracy to keep up wages by mo-

lesting other workmen, and the perpetration of acts of violence to the persons and property of masters and workmen. They were further charged in the criminal letters, which gave a long narrative of the atrocities that had been perpetrated for twenty years, with conspiring to burn mills, to set fire to private dwellings, and to murder Smith by the hands of M'Lean.

Twenty-five peremptory challenges were made to the jury by the prisoners, the Crown not challenging one. In England the prisoners would not have been entitled to such an indulgence, our law not permitting a challenge without cause in the case of misdemeanour. The Procurator-Fiscal of Lanarkshire proved that the pannels emitted their declarations (*anglicè*, made their statements) freely and voluntarily when in their sound and sober senses.

William Moir, Esquire, Sheriff Substitute, produced the deposition of the murdered man, John Smith. "He was in great agony, though perfectly distinct in his answers; and even when hesitating from pain, was perfectly collected. He felt quite conscious he was dying, and said he would never rise from that bed; and I impressed his situation upon him."

The capture of four of the *pannels* (prisoners) was then stated, and the taking of the books and papers.

Sheriff Alison accompanied the officers in their arrest, and thus describes the scene:—"My Lords, when I recollect Captain Miller's conduct when he entered the committee-room of the conspirators, and reflect on the moment when I stood beside him in the middle of the apartment, as he beckoned them out one by one, till the whole fifteen were delivered over to the police on the outside, with as calm a manner and resolute a voice, as if he were now discharging his ordinary duty in this court; and when I call to mind the character and proved deeds of the conspiracy, and recollect that every room in the house was then also crowded with conspirators, and that hundreds of the Association thronged the streets, almost within call, I cannot but regard his conduct on the occasion as one of the most remarkable instances on record, of that moral resolution, which is at once the shield of innocence and the bridle of crime; and which, paralysing

guilt by the ascendency of courage, proves its own safeguard by the awe which it inspires."

Owing to the great reluctance of persons to offer evidence, an assurance of protection by the Court was given to each witness. Before the first, James Moat, was examined, an objection by one of the junior counsel, Mr. James Anderson, was taken to his competency.

"This witness has received a promise of reward for giving his evidence. Your Lordships may perhaps be aware that two rewards were offered; and I wish to call your attention to the terms in which the offers are expressed. The first reward is an offer by the master cotton-spinners, of 500*l.* to any person or persons who will give such information to the Procurator-Fiscal as will lead to the apprehension or conviction of the murderer of Smith. The other by the sheriff, on the part of the Crown, is conceived in terms more objectionable. It is in the form of a proclamation issued by the sheriff, by authority of Lord John Russell; and offers, in Her Majesty's name, a reward of 100*l.*, to any person who shall give such information and evidence as shall lead to the discovery and conviction of the murderer or murderers. That comes clearly and directly under the objection in the law of Scotland, that a reward promised to any person for any evidence that he shall give, must disqualify him as a witness. He is not to get it for merely giving information or evidence, but only in the event of discovery and conviction. And the effect of this offer has been, that different parties in the Crown list of witnesses, who think they have been most instrumental in leading to the discovery of the alleged perpetrator or perpetrators of this deed, have entered into a newspaper controversy, as to which of them is entitled to the reward offered, in respect of the information given by them."

The Solicitor-General clearly refuted the objection. "The public interest must not suffer by the fact of the reward having been offered. When it is necessary, for the detection of crime, to propose a reward, that cannot be held to disqualify a witness from giving evidence, although it may be a question depending upon various circumstances, whether it

may affect his credibility in the course of his examination." The Lord-Advocate observed, in addition, that this objection was most unexpected, seeing that, "according to the information I have received, instead of any one coming forward to give evidence, the remarkable feature in this case is, that a person was murdered in a public street in Glasgow, and no one came forward to give information, even after the offer of reward."

Lord Mackenzie pointed out the manifest difference between a secret offer of a bribe for giving false evidence, and a public promise of a reward. "As to rewards offered by statute, it is admitted that they do not affect the admissibility of the person entitled to receive them."

It was truly observed by Lord Moncreiff, that the Crown could never offer a reward for the discovery of any crime, if such a principle were to be applied. "We all know that no atrocious deed was ever committed without some such reward being offered by the Crown or public authorities, and it has never been the law in this country, that that created an objection to the testimony of a witness."

"It is not a bribe," said Lord Cockburn, "for giving false evidence that may lead to a conviction by unjust means; it is a reward for speaking truth. For example, if a witness were to be convicted of perjury, he would not be entitled to the reward. It is a fair and honest reward, given for a public object, to aid in the discovery of the truth."

The objection was accordingly repelled, and the important evidence of James Moat proceeded with.

His revelations were listened to with intense interest. He spoke calmly and deliberately, as if perfectly assured of all that he was disclosing. Mr. Feargus O'Connor and the self-styled friends of the working classes affected at first to laugh at his statements, and those of Murdock, as if too ridiculous to be credible; but their levity did not last long. He proved that, upwards of twenty years since, he was first initiated into the Association of Cotton-spinners, and sworn to conceal their proceedings, and to stand by the resolutions of the majority. "Aliment money is given to members when there is a strike, and it is under the management of the supply committee. A

secret committee was in existence at the commencement of the strike in 1824, and consisted of three persons. The delegates representing each work were to bring in a name from each shop, and the names were to be put into a hat, and then the individuals to fulfil the duties of the secret committee were to be drawn out of the hat. When I was a member of the finance committee, a number were opposed to violent measures. I remember Cairnie being burnt to death with vitriol. Members were enjoined to tell the district committee that those who got aliment for that action had got it for God's sake, and that they had no right to it. The general rule at that time was, that the married men were to receive twelve shillings of aliment per week for a twelvemonth. Some, who had not been working, received, as I understood, the same amount for doing certain services. I understood, from the declarations of the committee, that some got it from their connection with the burning of the young man Cairnie. A guard committee was appointed at the commencement of the strike in 1837, to manage the guards that were placed on the different mills. These guards were to reason with those working at reduced wages, and, if necessary, to threaten and intimidate, and offer violence, to make them give up working. They call such men nobs.

"A meeting of select delegates, forty in number, was held at William Smith's, Black Boy Close, Gallowgate, six or seven weeks after the strike, in April, when the pannel James Gibb proposed more efficient measures, and a delegate moved that a secret committee should be put into existence. I should consider that the chief design of a secret committee was to destroy life and property. That was the ground on which I refused to go into the measure. I used several arguments, and said I thought they never could possibly alter the position of their affairs by any such committee. I made one objection, that the knowledge of natural rights existing in the country was such, that if any deed of violence was done, the association would be blamed for it, and the community set against them. I did not argue on the ground of the injustice of doing a deed of violence, but on its inexpediency; as, if I had used the former argument, I would

not have been listened to for a moment; they would have laughed at me had I spoken of injustice. After that, I ceased altogether to attend the meetings. On my way home, I spoke to the pannel M'Neil, and urged again my objection, and M'Neil argued against me, and pointed out particularly the bad conduct of Mr. Arthur, manager of the Adelphi Works; that he thought the appointment of the secret committee would be efficacious in intimidating the masters."

Moat then explained what they call a free line in the association. "When an individual left one mill and went to another, a line was sent to the meeting of delegates as to his debt, or whether he was clear as to his dues. This certificate is signed by Hunter, Hackett, Gibb, and M'Neil, and has the stamp of the trade in black on it. This is not an ordinary free line, such as those of which I have spoken. [*Reads it*]:

"'This is to certify that William M'Lean is a clear member of the Glasgow Operative Body of Cotton-spinners. *He has always done his duty*, and we recommend him to all our friends.'

That is not the language of a free line. It simply says the bearer is free of the trade."

Moat then spoke to the following important minute being in the handwriting of Gibb: —

"June 15, 1837.

"Moved, at the general meeting, by William Johnston, and unanimously carried, that the name of every nob at present working, and the districts they last wrought in, should be enrolled in a book, and, at the end of the strike, unless a change in the list takes place, they be printed; but, at all events, the names of all who remain nobs at the termination of the strike, shall be printed, and sent to all the spinning districts in Scotland, England, and Ireland; that they remain nobs for ever, and a *persecuting* committee be appointed to *persecute* them to the utmost."

Moat also explained the entry "Expenses for nobs, 19*l*." "The expense might be incurred by reasoning with them, and giving them drink, or the money may have been given as rewards for maltreating them."

It being then half-past seven o'clock, the trial was adjourned in justice to the pannels, that the Court and jury

should not continue the investigation of this most important and complicated case in a state of exhaustion, or without being able to give it their vigorous and unremitting attention.

The pannels gave their consent, and the jury were taken to the Queen's Hotel for the night. Next morning—

James Murdock, cotton-spinner, deposed that he came to Glasgow in 1816. "There was a kind of association existing, and I was told, if I did not join it, and pay my share, I could not be allowed to continue at that work. I joined the association. I went through a ceremony. An oath was put to me; I can't remember its words: it was divided into two branches; one, an oath of secresy to keep secret my taking it, and after the administrator had explained the good of it; the other branch was to abide by the majority in all cases regarding the trade. A Bible was used in administering the oath. It was put under the right *oxter* (arm-pit) during the time the oath was taken, and the word 'Ashdod' was used. It is in the 20th chapter of Isaiah, 1st verse. Signs were used. Since that time a change was made, in 1822, in the word and oath both. The word then was 'Armageddon,' 16th chapter of Revelations, 16th verse; both it and Ashdod were administered, and the change in the oath was a great deal for the worse; it became more vicious in its nature. It introduced something as to the punishment and abhorrence of nobs. I can't recollect more. By nobs I understood one who enters on a reduction of wages during a strike; but it may be understood otherwise. A person who revealed the names of the secret committee was considered the greatest nob; the speaking to any one so doing is also nobbing. The last time I was present at the administration of an oath was about nine or ten years ago, and a third oath, worse than either of the former two, was then administered. There was something in it with respect to masters that was not in either of the two before. The first secret committee that I recollect was appointed in 1818, when a factory called Broomward was started: and women, instead of men, put into it to work, and the object of appointing the secret committee was to get them put out. The first at-

tempt that was made was to set fire to it. I know that from the public newspapers, and from the money that was paid for it appearing in the schedule. The entry in the schedule to which I allude was the word 'Colliery.' That was a phrase perfectly well known by the whole of the trade, and I understood it to be the money paid for attempting to burn Broomward shop. A woman's house in Calton, who had a daughter in that mill, was entered. Her name was Widow M'Pherson, and her life was taken;—that is, the mother's life was taken, as we considered, in mistake for her daughter. I could not exactly say the year that this occurred. Two men were sent to America who had been members of the Association. They were sent at its expense. I believe the sum paid to them for going out of the country was on account of their concern with Widow M'Pherson, and no other reason was ever assigned for it among the trade. There was one M'Quarrie shot and wounded in the year 1820. I know payments were made, on account of that, to several. One of them, O'Callachan, has since been transported for shooting at Mr. John Orr of Paisley. I met Lochrie in the main street of Bridgetown, who told me there was to be an attack made on the nobs at Barr's mill at the scaling (breaking-up): and we went down to the Green to see the work scale or dismiss for the day. There were a good many spinners standing, gathered in a hollow in the Green, towards an entry that leads into Barr's mill. We remained there a little, and the work stopped, and the nobs came down the street. There were two brothers of the name of Kerr, who came along the Green dyke towards the town; and M'Quarrie came, to go through the Green by the monument. Darrock walked after the two Kerrs two or three steps, and then fired a pistol; but the shot did not take effect. M'Quarrie crossed the Serpentine walk, and came to the Green, and Stephen Campbell came out from the trees and fired a pistol at him which wounded him: he did not fall. There was no trial about the matter. It happened in the afternoon in the summer season, and was clear sunshine. M'Quarrie recovered of his wound. I gave no information as to this, because I was afraid of similar consequences. Stephen Campbell was a member of the Association. There

may have been an investigation into this matter. A reward of 300*l.* was offered for information regarding this assault.

Mr. Handyside. We propose to ask the witness whether Campbell told him that he received a reward of 15*l.* from the association.

The witness was removed.

Mr. Robertson objected to the question. "Surely the best evidence of the money being paid to Campbell would have been Campbell's own statement, that the money was paid to him, or the evidence of the person who paid it, or of some one who saw it paid. The public prosecutor is here wishing to establish that Campbell told this witness that he had received money; and what is this but secondary evidence, when primary evidence is within reach? Campbell himself is proved to be now living in Glasgow. The conversation took place when the pannels were not present, and relates to a matter in regard to which they have had no warning."

The Lord-Advocate denied that they ought to bring forward the man who committed the crime, and make him give evidence in regard to it. "This would be contrary to every principle of the law of evidence. When we prove a committee to have been appointed, and persons employed to commit outrages, and the question comes to be as to the remuneration received by a certain individual for an outrage committed, I submit that the evidence of the person to whom the party told what he had received as a remuneration is good evidence."

Mr. M'Neill reiterated the objection. "The particular fact to be established is the payment to Campbell; and what is the best evidence of this? Certainly that of the person who received the payment; of the person who paid it, or of some one who saw it paid. If Campbell were in the box, and refused to speak, then the Lord-Advocate would have put himself in a position to resort to secondary evidence. He is not now in a condition to do so. Not for the prisoners only, but for the law, I maintain this is not the competent mode of proceeding."

The Lord Justice-Clerk thought it would be a departure from the rules of evidence "if we were to allow this question to be put and answered: it is a fixed principle that

we cannot allow a statement to be given by one witness of what was said by another person, who might have been brought here himself."

Lord Cockburn expressed the sounder opinion that the question was competent. "It is totally impossible to advance a single step in the trial of a conspiracy, unless the acts and deeds, and verbal declarations of co-conspirators, are to be admissible to explain its character. In the meantime, however, I trust the public prosecutor will relieve the court from their present embarrassment."

The question was waived, and the witness proceeded with his catalogue of horrors.

"I recollect one John Graham being shot at. A dispute in the trade took place after the shooting at Graham, and a select committtee was appointed, to act openly to their own body, so that all the trade might know who were in the committee, that the like thing of shooting might not take place again. One John Kean was tried for shooting at Graham, convicted, and transported, after being whipt publicly at Glasgow. I know payments were made in reference to that matter, 20*l.* to one Daniel Orr, who was ordered to produce witnesses, and who satisfied the Association. I know of payments being made to Kean's wife after his trial. She got twelve shillings a-week for eighteen months, out of the funds of the Association. I know payments were made to Lafferty's wife of the same sum, and for the same period. Lafferty got eighteen months' imprisonment in Bridewell, and after he came out he was sent to America. I know of the shooting at the house of Brown, and one Walker was tried for it—in 1827 I think. Walker was a member of the Association. It was proposed to get men to swear that William Brown himself, whose house had been shot at, had hired men to do it. Walker had not then been tried, and they did not know that he would plead guilty. When this proposal was made to get these witnesses to swear, I knew it to be false. Walker was tried, pleaded guilty, and was transported. I recollect the case of Cairnie, the spinner, who had an eye burnt out of his head by vitriol; he had been nobbing, but not at that time. I have known Hunter

to be a member of the Association for eighteen years; Hacket since 1823 or 1824. M'Neil I have known as a member for nine years; Gibb for twelve years; and M'Lean has been a member for ten or twelve years, to my knowledge. There was a strike in April last. I applied for aliment to the Association after the strike, and had occasion to see the members of the supply committee that was sitting at the time. Hunter was director, or president." The certificate being shown to the witness, he said, "It is not in the usual style of free lines. I consider that M'Lean and these four men had been conjoined in something that led him to leave the country, and that they gave him that certificate. The secret select committee have a power to grant such certificates. He had not paid off his debt of thirteen shillings and ninepence, or it would have been taken out of this book" (a large book headed 'Debt Book of Trades').

"The names of the secret committee were not known. Nobody durst inquire for their names, or name them, or else they would be nobbed. It was a danger to inquire, for the body had no control over the committee. I was put in prison in August for protection, not for any fault."

Henry Cowan, cotton-spinner, said: "I recollect the last strike in 1837; I was then working in Hussey's mill. All the hands there struck at that time, and I went with the rest, but against my will, as I was averse to the strike. I was forced to come out along with the rest. It was very well known in the trade what a select, or secret, committee was. When a select committee was appointed, it was generally understood that some party was to be shot, or vitriol thrown, or some property destroyed, and that those things required a select committee. It is perfectly understood that the select committee hires persons to do all these things either directly or indirectly. I recollect hearing of combustibles having been thrown into Hussey's mill in May last. One day instructions came, that all the men of the shop were to be in their houses by eight o'clock at night, and to have proof to that effect. This was after the combustibles were thrown into the mills. It was quite general in the morning for the members of the Association to ask one another if they

had heard any news, and the answer was, 'No; nothing done yet;' meaning to express surprise that the delay was so long after the committee was appointed. We expected some person to be shot, or burnt with vitriol, or maimed in some way or other."

Archibald Alison, Esq., Sheriff of Lanarkshire, then gave evidence important for the prosecution, and most honourable to himself. "The strike of the cotton-spinners took place on the 8th of April, and thinking something would go wrong, my attention was incessantly directed to the subject. For the first fortnight after the strike, there was no outrage at all reported to me. In the beginning of May, however, I heard that large bodies of men were meeting, and parading the town, and that they were assembling in great numbers at the manufactory at Oakbank. I first met them on the 8th of May. There were from five to six or eight hundred people assembled on the road leading to the mills, filling the road for nearly a mile. I knew that twenty or thirty new hands had been taken into the Oakbank work, and I saw ten or twelve of those men that had been wounded and were bleeding. The provost and magistrates agreed as to calling out the military. I considered the whole civil power of Glasgow unequal to contend with the men I saw there on the 8th of May. After the 9th, when the military were directed to be ready, no more assemblages took place at Oakbank. One Keddie was tried, and defended by Mr. Gemmill, the agent of the Association, with great keenness and ability, but convicted on what appeared to me clear evidence; and I was just going to pronounce sentence on him, of imprisonment in Bridewell for three months, when Mr. Gemmill stated that he was a respectable man, and had been misled by ignorance to violate the law, and that, if I delayed pronouncing sentence, he thought he could persuade the Cotton-spinners' Association to give up their proceedings altogether; and I said that I would be too happy to agree to that, and adjourn proceedings for a week, and in the mean time to accept bail for 10*l.*; and this was done accordingly. At the end of the week Keddie was again brought up, and Mr. Gemmill stated that he had communicated with the

Association, and that, if I suspended judgment, they would stop all the riotous proceedings. Other seven persons had been indicted at the same time in a summary form, and I stated that, if all these proceedings stopped, all further prosecution against them would cease. I left Glasgow on the 1st of June, and was absent till the 14th. On my return, I received intimation of a great meeting to be held on the Green that day, and took measures for procuring the assistance of the military. From the 14th of June till the 29th of July, when the committee were apprehended, there were complaints of violence to the operatives made almost daily. They were not complaints of mobs, but of individual injuries, and attempts at fire-raising. I should have thought it then impossible to keep the peace without a mounted patrol of at least a hundred men, independent of the local police. There were several attempts at fire-raising and throwing combustibles into cotton-mills, Hussey's and others'. The persons assaulted were nobs. A report was made of a combustible being thrown into a room in the house of a master spinner, but being thrown out again. Frequent applications for protection by the police and military were made to me by persons meeting me in the street. On Sunday, the 23rd of July, I first heard officially of the murderous assault on Smith on Saturday evening, the 22nd. I saw the reward offered by the masters. I communicated with the Home Secretary, and got authority to offer an additional reward, in the exact terms contained in the proclamation. Smith died, on the Tuesday following, in the Infirmary. I was told by Mr. Salmond that certain persons were ready to give information, if they could be protected from danger in the mean time. I met these people in a secluded place, as they would not come to the office. We got also information of the name of an individual intended to be murdered, and he was warned. I heard on the Thursday that the committee were to meet on the Saturday following, and I was resolved to go and arrest the whole committee myself, as I expected there might be resistance. I got Captain Miller and twenty policemen, and went to the committee-rooms exactly at ten o'clock on Saturday evening,

the 29th of July, and fortunately got them all together, and arrested them all at once. Some papers were in the room in which they were sitting, and others in an iron safe in another room. All of them were taken. There were many other strikes amongst colliers, moulders, &c. at that time, and acts of violence as to them all. But since the 29th of July there has been no complaint of any acts of violence from any of these trades, and I have seen no signs of a combination since, or any mobs of any kind. A public meeting was held on the green of Glasgow, on Monday, the 31st of July, to consider what was to be done; and the strike terminated, and all the hands came in within five days after, and the mills have worked since without any stop."

Alexander Arthur, manager of the Adelphi cotton-mill, Glasgow, next related the menaces held out to him. "We took new hands in on the 4th of May. After that the mill was watched by the turn-out spinners. Guards were put on the mill, and the new hands were molested. Great bands gathered round the mill, and, when people went out, stones and dirt were thrown at them. We were at one time obliged to lock them up at night, and get beds for them. Before the strike, a good workman could make from 26*s.* to 28*s.* a week. The reduced rate would leave him 24*s.* a week. I received a letter signed Richard M'Neil, Glasgow, June 20th, 1837. 'Sir, I take the liberty of writing these few hurried and disjointed remarks on your conduct these ten weeks past, and I have only to say, that the language of a letter is too inadequate to convey the feelings of scorn, indignation, and contempt at the pitiful line of conduct you have pursued towards the cotton-spinners during that period. I have been taking a steady and retrospective view of your mean and mercenary conduct towards those brave but starving men—engaged as they are in a struggle the most righteous that ever man engaged in, *the protection of their labour, their only capital.* Believe me, Alick, the time is not far from hand, when a Bellingham will appear to take into account the base *Percevils* who have attempted to ruin them and their children. I sincerely hope the mark will be as effectual, although they should be suspended, like Mahomet's coffin,

between heaven and earth, for so doing. You may sneer at this, and consider it a mere idle threat, but a short time will show the contrary. Beware! for if I forget you, may my God forget me.'"

John Bryson, manager of Mitchell's mill, declared that he had also received a threatening letter, with a coffin sketched as ready for him; yet M'Neil, the supposed writer, attended the same church with him.

Hector Gavin, an engraver in Edinburgh, spoke to the handwriting. "I have attended to the difference in handwritings, and have been frequently examined in courts of justice as to the handwriting of documents. This letter is in the same handwriting as the minute and the signature of Richard M'Neil to the declarations. I am quite satisfied of that, and have had an opportunity of considering it deliberately. The writing of that letter is not written with the same degree of freedom as the minute. It has the appearance of being disguised, but it is not so sufficiently disguised as to prevent me from seeing that it is written by the same person."

On its being proposed to read these letters, Lord Moncreiff objected. "I have no idea of proving handwriting by an engraver alone, which we know is the worst possible species of evidence." The Lord Justice-Clerk overruled the scruple of his brother judge. "What may be due to the evidence of engravers I do not say, but I think there is evidence which we cannot prevent going to the jury. The letters are signed Richard M'Neil, and the pannel in his declaration declines to answer whether he wrote them."

Some striking facts were then proved of the social tyranny that prevailed, under which the whole body of spinners groaned. One Thomas Donaghey, cotton-spinner, who had worked at reduced wages, and refused to give over when required, had his house attacked on the 29th of June at midnight by a number of people, who broke in the panel of the door. "I stood in the middle of the floor, having a pistol in my hand, and threatening to fire if they did not go away. Riddle was for going away, and some of them behind urged him on. Riddle asked me again if I would give over working, and I

said if they went away peaceably and quietly I would be out next day by eight o'clock, meaning I would leave the work. He desired me to give him my hand then, and I gave him my hand. He said, 'Now promise me you will come out at eight o'clock,' and I said 'I promise.' He said, 'Say I declare to God,' and I said it. They then went away. I changed my lodgings next day, and went to my work that day, and have continued there ever since."

James Wood, cotton-spinner, "took new workers into the mill about six weeks after the strike. Guards were set on the mill after the new hands were taken in. They were apparently cotton-spinners that had struck work. The mill was regularly watched the whole day by bodies of from four to twelve men. On the night of the 11th or 12th of July, I think the 12th, I had occasion to sleep in the parlour, and just as I was getting into bed, a little after twelve o'clock, a canister was thrown through the glass of the window. It was blazing at one end. It had been stopped by the window blind, and did not come far into the room. I caught it before it got to the ground, when resting on the white cotton blind. I observed that it was blazing before I lifted it. The flame was coming from the top. I caught it, lifted the window, and threw it out, and shut the window again. While shutting the shutters another canister came through the window. It struck me on the breast while shutting the shutters. It was also blazing. I caught it, and threw it also out, and then closed the shutters, having first called out of the window for assistance. I heard voices in the street a little afterwards. I went out to the street in half an hour, as soon as I could get on my clothes, and looked for these canisters, and found one of them, but did not find the other. On the morning after this happened there was no appearance of guards, and none during that day."

This canister, it was then proved, had been purchased by three workmen the same day it was thrown.

"A strike having taken place in April in Mr. Hussey's factory, two packets of combustibles were thrown into the waste-room and yarn-room in May. The cotton waste, which is very inflammable, lay loose on the floor, or was

packed in boxes. The position of these boxes had been changed since the strike, or they would have caught fire. The value of the yarn in the room might be 5,000*l.* After the reduction a good workman would get more than a pound a week, but the average would be about a pound, after paying the piecers. Before the reduction they could earn 25*s.* a week, I dare say."

Several of the workmen at reduced wages proved their being knocked down and maltreated. To some of the nobs or nob-sticks the crowd made signs, holding up their finger and thumb as if it was the trigger of a gun, and pelted them with stones on leaving their work.

The first declaration of Peter Hacket was then read, stating that "Thomas Hunter was chairman, the declarant treasurer, and Richard M'Neil secretary of the committee of supply. Being shown a book commencing 'Outlay' and interrogated, declares that the greater part of said book is in his handwriting, and the sums therein set down were paid by him; and his attention being called to the following entries, 'Walter Morrison, 3*l.*,' 'John Dodd, 3*l.*,' 'Expenses with nobs, 19*l.*,' declares that the third item has been put into the pound column by mistake, and should have been in the shilling column."

It was then proposed to read a letter signed Patrick M'Gowan, found in Hacket's house; but against this course Mr. Robertson strongly protested. "We have no evidence that the letter is a genuine document; we have no evidence of the handwriting. It is a letter merely appearing to have been transmitted through the post-office, and in that state of the matter it is proposed to read this letter, which is not merely admitted to contain something applicable to the general conspiracy, but is said to contain evidence applicable to the particular act referred to. The best evidence in this case is deficient in two most important particulars. The best evidence of the letter being written by M'Gowan, is the evidence of M'Gowan himself to prove his own handwriting. Here is the first defect; but there is a second, and it is this, that they have not proved the circumstances under which the letter was found in the possession of the prisoner, if ever it

was in his possession at all. How does it appear that the prisoner Hacket received it? How does it appear that other persons may not have opened it, and cast it into one of those open drawers? I do not know that I am even called upon to admit, in point of legal evidence, that this letter came through the post-office. It is laid down that the post-mark on a letter may be proved, where the fact is material, by any person who knows it to be genuine, but no mark proves itself. The fact of the post-mark on this letter is not proved by any body at all. I cannot admit that the mark apparently a post-mark, is here legal evidence that the letter went through the post-office to Hacket. The question is, what is the act done? It is twofold, either the writing of the letter or the receipt of the letter." Mr. Robertson cited the authorities laid down in Hardy's case and in the case of Watson.

Mr. Shaw Stewart contended that the document was evidence of the proceedings of the Association. "It is addressed to Hacket, not at his private residence, but at William Smith's tavern, Black Boy Close, the place hired as an office for the use of the committee of the Association. It is addressed to him in the character of treasurer of that committee. Now we tender this letter, not as the letter of any particular individual, but as a document tending to prove the character and proceedings of the Association, and in support of our general charge of its criminal proceedings; and I submit that it is precisely in the same position as any other document which might have been found in his hands."

Mr. Stewart urged correctly, in point of law, that in order to prove a conspiracy going on at the time, he was entitled to bring forward any correspondence as evidence, which connects together those parties in their different transactions.

"Under the very authority stated from Hardy's case, I cannot bring it in proof of a declaration of guilt by a co-conspirator, but I may refer to it as a link in the chain of transactions showing the character of the conspiracy."

The Court decided against the objection, Lord Mackenzie saying,—"I do not think it is in the power of the Court to refuse to admit this letter as an article of evidence.

I consider it quite sufficient to render the letter admissible as evidence that it was addressed to Hacket, and found in his house; and that it is reasonable to suppose that it was there before he was apprehended. The existence of such a letter, so addressed, and so found, seems to me a very important article of circumstantial evidence connected with the conspiracy."

Lord Cockburn, who always expressed his opinions with great point and clearness, said,—"I read it as I would read any anonymous letter, or any paper, or placard, or as I would look at a plan, or at one of those packets of combustibles produced in evidence yesterday. I view it, not as a letter, but simply as an article touching the common cause, and traced into the hands of a prisoner."

The Lord Justice-Clerk coincided. "From the moment the argument was raised, I have held this letter to be —not a document, the author of which was attempted to be authenticated—but a writing relative to, and connected with, the business of this Association, and written by somebody in the course of carrying on their proceedings. In the case of Hardy, a letter from a society at Sheffield, signed William Broomhead, and which had been found in the possession of Thelwall, a conspirator not under trial, was read, without there being a vestige of proof that there was such a person as William Broomhead, or that there was a Sheffield Society in existence. Therefore, without holding it to be the writing of any M'Gowan at all, but viewing it as an anonymous document affecting this association, and found in the possession of the treasurer, we are bound to receive it in evidence, let the effect of it be what it may."

The letter was then read, and contained a report of his efforts to raise supplies from delegates at Manchester, &c.

David Fleming, criminal officer of the Glasgow police, then proved that, in spite of sixteen officers sent to protect the Oakbank factory at the hour of dismissal, the new hands were assailed with stones, and several severely wounded.

The widow of John Smith, late cotton-spinner in Glasgow, narrated in simple style the sad story of his murder. "My

husband was working in Houldsworth's mill after the strike. I recollect going out to make markets on Saturday night with my husband. We went into Clyde Street about eleven o'clock. The watch was crying past eleven as we went into a shop at the head of Washington Street, next to Clyde Street. After leaving it, we went to another, a flesher's shop. We passed Mrs. Cross's shop, and after passing it, my husband was shot, while I was at his side, walking together. The shot came from behind. My husband fell forward, and I started, my senses having nearly gone from me: but I saw like four persons behind me, but could not say more than that they were dark bodies or objects. I stooped to lift up my husband by the arm. I did not know where these bodies went. They did not come to my assistance, nor do I know where they went. When I rose, the first thing I saw was a man coming, apparently to my assistance, from the foot of the street. I did not remember to look back. I had screamed out murder two or three times, and when this man came the length of me, there were more around me. I ran up the street before them, when my husband was lifted to be carried away. When I went to lift my husband, he said he was shot, but said nothing then to me as to the cause of it. My husband was what is considered a nob. He never expressed to me apprehensions of being injured for being a nob. I have no recollection of having observed any persons following me, or my husband, and nobody whatever spoke to me or him in the streets."

On the surveyor producing a plan of the streets, Mr. Robertson proceeded to cross-examine him as to distances, and the

Lord Justice-Clerk interposed. This looks as if a defence of *alibi* was to be set up. If so, we ought to have been advised of it before.

Mr. Robertson. It is stated in the defences, which ought to have been read. They may be read now.

The pannel's defences were then read. "The defenders are not guilty of any of the charges contained in the libel. The prosecutor has not specified the precise hour at which

the alleged murder of Smith is said to have been committed. None of the defenders were at the alleged *locus delicti* at the time of the alleged murder. During the whole, or greater part, of the night of the 22d July, 1837, the defender Hunter was in the houses or shops of Robert Johnstone and —— Arthur, at or near Burrowfield Toll, or in the vicinity thereof; the defender M'Lean was in the public-houses of Angus Cameron, in Salt-market, and M'Ilwraith, in Bridge Street, Glasgow, or in the vicinity of these places; and the other defenders were in the tavern of William Smith, in Gallowgate Street, or in the vicinity thereof."

Dr. Pagan, one of the medical officers in the Glasgow Infirmary, proved that Smith died on Tuesday morning, 25th of July, from a bullet wound which had severed the spinal cord, and that another bullet had passed through his arm.

The deposition of John Smith was then read. "At Glasgow, and within the Royal Infirmary there, the 23rd day of July, 1837, in the presence of Walter Moir, Esq., Sheriff Substitute of the county of Lanark, appeared John Smith, who being solemnly sworn and warned by the sheriff to tell the truth, the whole truth, and nothing but the truth, as if in the prospect of death, depones, that he is forty years of age, is a native of Ireland, a cotton-spinner to trade, and for about the last four years has wrought to Messrs. Henry Houldsworth and Sons in their cotton works, Cheapside Street, near Glasgow; that sometime ago the operative spinners in said cotton-mill struck work, and they have since continued idle; that the deponent about three months ago took work as a spinner, and got the whole wheels in the mill; that none of the old hands have since threatened to hurt the deponent, but they have passed him without speaking; that he is unable to say who shot him, and has no suspicion of who did so, nor did he hear any footsteps behind him before being shot: Depones that one day, about eight days ago, Arthur M'Grady and Michael Sinclair taunted the deponent about taking wheels from Houldsworth and Sons, and M'Grady told the deponent that he would not be like him for the world; that he is convinced that the old spinners

would have injured him if they could have got opportunity, and that it is on account of his having taken work from Houldsworth and Sons that he was shot last night; and all this he depones to be truth, as the deponent shall answer to God."

If the next witness had been credible, it was proved out of M'Lean's own mouth that he had committed the murder.

Robert Christie, lately spirit dealer in Gallowgate Street, of Glasgow, who had been a cotton-spinner for several years, and had taken the oath of secrecy, spoke to M'Lean having been in the habit of frequenting his house for some time, and shortly before Smith's murder having a conversation with him about Arthur. "I did not understand at first what he was meaning; but when we came to St. Andrew's Square he said he was going directly across the water to *death* Mr. Arthur. I trembled when I heard the words expressed, and I began to flatter with him, and put him off the action. He then made answer and said he was determined to do it, and he gave a little stagger and put his hand to his right coat-pocket, and said, 'It is here that will do it.' I still continued to coax him, and to put him off doing it. He still persisted that he would. I saw the butt end of a pistol in his pocket, as I thought. He came to the back-door in the evening of the Sabbath before Smith's murder, and asked me for a pair of dark gloves. This was in the close. I said I would get him a pair, and afterwards gave them to him. I asked him what he was going to do with them, and he said, 'Oh nothing,' and put them into his pocket and went into the room. On going out at the back-door, M'Lean turned round to me and asked if I had heard anything; and I said 'No,' and M'Lean said that they were watching for Mr. Arthur for these two or three nights past. He went away. He brought the gloves back on the Tuesday following. I saw M'Lean again on the Tuesday after Smith's murder, about eleven o'clock, in my own shop in the Gallowgate. M'Lean then said to me, 'I have made one sleep.' I said, 'Oh William, what is that you are saying?' He said, 'I made one sleep;' and turning round, pointing to a placard in the street, asked if I saw yon, and I said 'Yes, it is 50*l.* of a

reward offered.' 'No,' said he, 'by God it is 500*l.*' I was agitated at the time, and just said 50*l.* as being confused. On his saying it was 500*l.*, I said, 'For the love of God, William, make your escape, or you will be apprehended immediately;' and he turned about and said to me, 'There's nae *down* on me, they are away after another man to Liverpool,' meaning that the suspicion was not against him. He went into the room to the rest, where they were drinking spirits. In a few minutes he asked for a light to his pipe. When going out for one, I was standing at the side of the counter, and he put his hand into his pocket, as if looking for a bit of paper to light his pipe, and then put his right hand out, and said, 'There is the wee paw that did the trick.' He was going out, but before he did so, I asked if any person saw him do it, and he said he took good care of that; and he put his hand into his breast, as if pulling out a pistol, and put himself in a position as if firing the pistol, and then, putting his hand into his breast again, said, 'I walked off: I did not run; I just walked across the street.' M'Lean also said that 50*l.*, or 100*l.*, I do not recollect which, was offered for him, and that it was he who had done the deed. He said at the same time, 'I wish to God that there were three days of darkness, and I would do for them.'

"Next day M'Lean began to speak about America, and said that he was meaning to go there. I asked if he had got clothes, and all things in readiness; and he said all that was sorted for him. On going out he was hindmost, and he then said that the committee had supplied him with these things. He spoke something about a passage being secured for him, and said something about Hamilton and Brothers."

The credit to be given to this strange story of an accomplice and informer was shaken by Mr. Robertson in cross-examination. "When I left Glasgow for ten days, I was away seeing an uncle of my wife's in London. I had intended going to London on giving up my shop. There was nothing that I knew, except M'Lean's coming about my shop, that led him to make this communication to me about Mr. Arthur. I mentioned this after Smith's murder, but not before. I can't

tell what was to be done with the gloves. They were black worsted. Montgomery asked me for a pair of mits, and I did not understand him. He said it in a clandestine kind of way. I did not understand it, and asked what he meant; and he said, 'Oh, you are not up,' and said, 'I will send out Willy.' He went in, and Willy came out and asked me, 'Have you a pair of black gloves?' and I understood that, and said I would get him a pair. I suspected something, but did not know what was to be done with them. He returned the gloves to me on the following Thursday in the Gallowgate shop."

Mr. Robertson. You said he told you a number of foolish things; what foolish things?

The Witness. One of the things he said was wishing for the three days of darkness.

Mr. Robertson. You thought that a foolish thing.

The Witness. It was very nonsensical.

Mr. Robertson. Pray, Mr. Christie, did you ever know that there was a reward offered to the person who should give information that would lead to the conviction of the murderer of Smith.

The Witness. Yes, I heard of the reward.

Mr. Robertson. When did you hear of it?

The Witness. On that Tuesday M'Lean let me see it himself. It was on the placard pasted on the wall opposite my shop, and was a reward of 500*l.* I read it after he told me about it. I first gave information as to this after I was in prison.

Mr. Robertson. Did you consider yourself in any danger when in London?

The Witness. Not in the least.

Mr. Robertson. Did you believe M'Lean was the murderer of Smith?

The Witness. Did I believe! It is very likely a person would believe it when M'Lean told it himself.

Mr. Robertson. Believing it, and being in perfect safety in London, why did you not give information to the authorities?

The Witness (after a long pause). I cannot give an ex-

plicit answer to that. One thing is clear, that it would have been a bad job for me if I had given information; because, I having been a member of that body myself, it might do me evil again.

Mr. Robertson. Although you were safe in London?

Witness. Yes.

Mr. Robertson, with sound judgment, rested his cross-examination here; for the credit of the witness lay prostrate, and further questioning might have raised it up again. On his re-examination he explained what might possibly have been the true reason for his silence.

"When I was taken before the sheriff, I was not willing to speak out at first. It was not till I was examined six or seven times, that I told the sheriff what I have stated to-day. I was reluctant to speak out, from knowing that I was under the obligation of an oath not to reveal anything. I mean the oath I had taken to the Association some nine years ago. Another reason was, knowing that there were so many individuals shot at and burnt with vitriol by the Cotton-spinning Association. That was another cause that made me reluctant. I told the sheriff that it was the oath and a dread of vengeance that prevented me speaking out at first; and I did not do so till he gave me assurance of the full protection of the law, as I have got to-day. I did not refuse to speak because I thought it right to conceal a murder."

James Hamilton, shipping-agent at Glasgow, was called upon by M'Lean, about the 20th of July, to learn the price of a passage to New York.

Adam Dixon, cotton-spinner, gave some confirmation to Christie's story, and showed that M'Lean was out-spoken. "I was asked on the Monday by M'Lean, if I had not heard of the man being shot in Anderston. I told him I had, and that it was a pity. He seemed to laugh at me, and said some jesting word—but I can't repeat it—about my Methodist face. He asked me if I knew whether the committee was in, and I said I did not know. He said he was wishing to see if he was to get five or ten, or ten or fifteen shillings, but I am not sure which. I do not remember at present if he said any thing more. He turned about, and said he be-

lieved that there was no *down*, meaning that they had not taken any person for it."

The reliance to be placed on this witness seemed the stronger from his being friendly to the pannel, and favourable in other particulars. "I never heard of a secret select committee in my life."

Mr. Robertson. Or of any committee under such or any similar name, the purpose of which was to superintend, direct, or control violence to life and property?

The Witness. I never heard of it. The purposes of the Association were just, to keep up the rate of wages by lawful means. I am an elder in Mr. Harvey's church, and have been so for three years. I kept a Sunday-school at one time. I looked on the vulgarity of M'Lean's language, but did not look on it as the confession of a murderer. I once saw in a schedule an entry of 'Collieries,' and a sum of money added to it. I did not understand its meaning. I would not, as a nob, have liked myself to walk through Glasgow unprotected by day or by night.

Archibald Campbell, cabinet-maker, "went into King's public-house, Calton, on the evening of the murder, and overheard seven or eight persons, who, by their dress, appeared to be spinners, say among themselves, 'Smith will be shot to-night.' The man that came with me and I were conversing at the time. In a little after that some one said, 'It is a pity of Callachan' or 'Gallochan,' I am not sure which. 'He is in Glasgow, and he will be, or is, well hidden.' I turned round and said, 'He will be gey well hidden if he's no gotten.' They just looked at me, as if they were angry at my speaking to them, or interfering with their company. Next morning (Sunday), I heard that a man was shot on Saturday night, down about the Broomielaw. I also heard some one of the seven or eight men speak of a canister, and say, 'It was well packed, but badly thrown.'"

He was not cross-examined.

John Sheriff, fishing-tackle maker, spoke to the purchase of the bullets. "In July last, I remember some persons coming to purchase pistol-balls, the Tuesday or Wednesday before the deed was done — the shooting of Smith, the cotton-

spinner. Three persons came to the shop. I formed an opinion afterwards that they were cotton-spinners, when I recollected their dresses and appearance. Only one came into the shop, and he asked for bullets for a pistol, the other two looking in at the window at that time. I said I had pistol bullets, and the man showed me two pistols, to see if I could fit the bullets to them. The one of them was an uncommonly small pistol, and the other a holster pistol, and a very large one. He made a purchase of half a dozen of the larger size, though too large for the small pistol. They were of the same description as those produced."

William Smith, cotton-spinner, was next permitted to speak to the hearsay assertions of a woman who declared that she had seen the murder, and was since dead. "I knew Mary Wilson, who died of a fever shortly after Smith was shot. I had heard that she had seen Smith shot, and went to her. I asked if she had seen it, and she told me she had. I asked what like the person was that had fired the shot; and she told me that he was a little, set man, with dark moleskin clothes. She said he did not run, but adjusted the hat on his head after firing the shot, and went at a quick pace, and she followed him a bit. I spoke to her twice, and she told me the same story—quite the same both times. She died in a very short time after this. I did not advise her to inform the authorities of what she had said. I knew it was my duty to have done so, but it was a neglect on my part. She herself expressed a disinclination to be brought into trouble about it."

An English lawyer would ask how came this hearsay evidence to be admitted? It turned the nicely-poised scales in favour of M'Lean.

Mr. M'Manus, brother-in-law to Smith, to show his unpopularity, mentioned his bidding for a comb at an auction shortly before his death. "On the man handing it down to him, a man on the opposite side called, 'Don't give it to him, he is a nob.' Another beside him said, 'He is a black *neb*,' and hissed him. The poor man had expressed to another companion, David Thorburn, great anxiety to get home. He was afraid of being ill-used, on account of being in Mr. Houldsworth's factory. He said he had some things to do

that night, to make his markets. I know all the pannels. I received money from Hunter to leave the country. This was because a spinner got a beating. They would not let him work in Glasgow, and he would not go home to the West country. I was concerned in that beating. I got money to take myself out of the country, and stayed away for three months. But, on coming back, I was taken up and tried, and got sixty days in Bridewell."

John Douffy, labourer, heard the report of fire-arms in Clyde Street. "It was loud. I did not see the flash. I was about half-way down the street myself when I heard it. After hearing the report two men came up on the west side of the street. The one was before the other, but not very far. They were walking smartly up the street. The second man had dark kind of clothes on. His coat was dark, and was a pretty long one. He looked 'gey and tall,' but I could not know his height. I could not say if he was square or fat, or what like he was. He just passed me, and I looked and saw he had a dark coat on. I could not speak as to the size of the first man at all. I could not say if the hindmost was old or young. After they passed, I heard a wife cry that her man was shot."

A singular instance of inconsistency and mistake as to time occurred in the evidence of his companion, who said that ten minutes elapsed between the cry and seeing the flash. There were four in company who might have arrested the assassins, but did not think it worth their while!

James M'Dougall, criminal officer for Stirlingshire, was directed to the hiding-place of M'Lean in August. "I asked him his name, and he said John M'Intyre. His father was sitting at the fire-side, and I asked 'Who is this?' and the pannel M'Lean said, 'He is a lodger.' I looked at him then, and said, 'Come sir, tell me your proper name;' and he said, 'William M'Lean.' I told him then he was my prisoner, and that it was for murder. I took him prisoner and searched him, and found the certificate. He neither said one thing nor another. He was very much agitated. He wanted his neckcloth, and as I was putting it on to him I felt him all trembling."

Donald M'Lean, another criminal police officer, asked the reason of his going to Stirling, and he said "that he had heard that he had been accused of assaulting a Mr. Miller at Lancefield some years ago, and that he went out of the way on account of that charge, on hearing that some spinners at Glasgow had been taken up."

Two certificates were then read, written for the purpose of proving an *alibi*.

"This is to certify that William M'Lean was in my house till twelve o'clock on Saturday the 22nd July, from about ten o'clock. —ANGUS CAMERON."

"William M'Lean was in our company from nine o'clock on Saturday the 22nd July, till about two o'clock Sabbath morning." —(Signed by eight individuals.)

Thomas Long, the first who signed this last *alibi* certificate, explained how he came to sign it. "His father told me that it was to let his neighbours see that he was in company with a body of men in Angus Cameron's house, at twelve o'clock on Saturday night, the 22nd July. I signed it. On the afternoon of the same day on which I signed it, having considered it, I went up to his father and told him I could not swear to twelve o'clock, and he said he would draw out another certificate."

The case for the prosecution was closed with reading the declarations of the pannels Hunter, Gibb, and M'Lean, of which the following formed the most material passages: —

"That from the protracted nature of the strike, the funds have come to a very low state, and the sources of their acquiring them being in a great measure dried up, the allowances to members are very limited, and the declarant is not aware that the funds have been diverted to any other purpose than the lawful expenditure of the Association.

"That the certificate is a clear line to William M'Lean that he had paid up his accounts, and the declarant signed it from information that all was correct, but he did not examine any books on the subject.

"Declares that shortly after the strike a guard committee was appointed, whose duty it was to advise persons against

taking work contrary to the wish of the Association, or to discontinue work if they had taken it under these circumstances.

"Gibb, interrogated if it was ever the practice of the Association to exact from members of whom they were jealous of their adherence to the body, bills without value for sums of money, bearing nevertheless that value was received; or for such members to allow decrees in absence to go out against them, with a view to such members being afterwards prosecuted if they proved adverse to the will of the Association: Declares that he has reason to believe that such practices did exist some years ago as to bills, but not recently.

"William M'Lean declares that a strike or turn-out of the cotton-spinners in and about Glasgow took place in the beginning of April last, and he has had aliment or supply from the Association funds since the strike, according to the state of the funds, varying from eight shillings to eighteenpence a week. Smith was considered by the trade to be nobbing, that is, working at reduced prices. Interrogated, declares that it was not the declarant who shot the said John Smith, and he has no knowledge or suspicion who committed the said crime; that declarant the same night proceeded to Glasgow Green to get his weekly aliment from the Association; that the persons who were to bring the aliment had not arrived, and as it began to rain, about a dozen of cotton-spinners went along with declarant to the shop of Angus Cameron, in Salt-market, to wait till the aliment was brought to them. He named the eight who signed the certificate, and others, and that it was near ten o'clock when they went into Cameron's; and Johnston brought their aliment, and paid it down to them, and the amount was a shilling each. That the party had three or four mutchkins of whiskey, and they did not leave Cameron's till after twelve o'clock. Declares that the declarant did not leave Cameron's from the time he went into it, as above stated, till the time the party left, a little after twelve; declares that on leaving Cameron's several of the party left, and the others went to the spirit cellar of one M'Ilwraith in Budegate, Glasgow, where they had some more whiskey, but he cannot remember how much, as by

this time he was rather worse for it. Declares that upon said Saturday he was dressed in a green long tailed coat, grey trousers, and black hat, that he had whiskers, and continued to wear them, till one day in the middle of last week, when he happened to be cropping them with a pair of scissors, but having made a '*gaw*' in them he shaved them off altogether, with the intention, however, of permitting them to grow as before. Declares that he remained at home during the week after Smith had been shot, but on Monday the 21st of July declarant went to reside in the house of his cousin, Ann Cameron, at Kincaidfield; and his reason for going there was, that he got information from James Walker, a cotton-spinner, that some persons had given false information to the Procurator-Fiscal that the declarant had several years ago committed a violent assault upon a spinning-master at Lancefield, for which a hundred pounds of reward for the depredator was offered. Interrogated, declares that on Monday, being the day he went to Kincaid, he wrote out the paper or certificate now produced, and put down the names of the persons who had been with him on the night of Saturday the 22d of July. Declares that he was induced to write out that paper from his friends saying, that if false information were given in against him as to Miller's assault, it was just as likely the same thing might occur as to the murder of Smith, and it was therefore better to prepare for the worst, as it was considered the declarant's going out of the way, as to the assault on Miller, might strengthen the suspicion that declarant was accessory to Smith's murder, supposing false information was given in against him. Declares that about the 11th of July last he had an intention of proceeding to England to try and get work, and he applied to the committee of supply for a line or travelling card, and it was given him. That dozens of the declarant's friends advised declarant to go out of the way, but this was after the committee were seized; and no one advised him to do so before that time, and in particular Christie did not. That the declarant has heard some whisperings of a secret select committee among the spinners, but he never heard of it from any authentic source.

"Interrogated and desired specially to explain how it hap-

pened, if he was wholly unconnected with Smith's murder, that the intelligence he received of the apprehension of the committee of cotton-spinners, upon the night of Saturday the 29th July, 1837, should have led him to apprehend danger to himself, not from any thing connected with that murder, but a crime of which he says he was suspected, committed many years ago, under the direction of a totally different committee, and of which, he alleges, he was equally innocent as of Smith's murder? Declares, that he merely went out of town for a few days on this occasion, until his friends could ascertain in which year and at what time the old crime with which he heard he was charged had been committed, in order that he might be able to prove his innocence."

After this most damaging, self-convicting statement, the Lord Advocate announced, "Gentlemen of the jury, the case for the Crown is now closed."

According to the custom in Scottish trials, where all the speeches are reserved to the close, the prisoner's counsel having the last word, the exculpatory evidence was then proceeded with. They called member after member of the Association to show that there was no such meeting as the one sworn to by Moat, where the secret committee had been voted; that there was but one meeting in the kitchen of Smith's house, at which Adam Dickson presided, and which broke up at half-past nine. None of the pannels attended that meeting. The business that was submitted to them was to make arrangements between master and man, to try to raise supplies.

Time having been given to explain away the different entries and certificates, the witnesses were able to put a false and ingenious gloss on each. "A guard committee was appointed for the purpose of seeing if any of our hands were going in and deceiving us, by receiving aliment from our funds, and to see if the strike was likely to be prolonged. They were to do no more to the new hands, but to offer them the same aliment we were getting, and nothing more. The guards were to persuade them by fair means, and they might give them a glass or so, if they were agreeable to go. They never heard of the words 'Ashdod' or 'Armageddon.' The object of their

union was only to get the rate of wages they thought proper and right; and that by standing out and not working, and preventing the masters from producing their goods. There was a rule that, if any thing was carried by the majority, it was to guide the trade; but any of the minority could please themselves. We let them work or take their share of the union. A man did not remain a member, if he worked after a strike. Such men generally went by the name of nobs. 'No. 60!' meant the men that received aliment after they lost their wheels. A nob was in perfect safety to walk about the streets of Glasgow by day and by night, at this time. 'If I had been a nob,' said each spinner, 'I would not have been afraid of any violence.'"

It appeared there were two rooms in Smith's house. "They had a small room for the committee, as they could not use the large one only on strikes, so many came about."

Regard for an oath was of so little importance in the minds of these infatuated men, compared with their obligations to the society, that one of them, Archibald Mackay, had the hardihood to swear, having been a member of the Association since 1823, that previous to the last strike he never knew of violence being used by cotton-spinners. "I have heard of it, but I did not believe it; and I never knew violence used by any cotton-spinner against any *nob* while I have been at Glasgow before the last strike. I believe that vitriol was thrown at persons, but I don't believe that cotton-spinners did it. No motive occurred to me for it, and I thought it a bad thing. I don't think a person could gain anything by it. I don't remember of any cotton-spinners being punished for throwing vitriol."

The Lord Justice-Clerk. Do you not remember of five persons being convicted at Glasgow for throwing vitriol, and transported for fourteen years about the year 1823?

The Witness. No, I do not.

The Lord Advocate. When you came to Glasgow, did you hear of vitriol being thrown, and persons being punished for it?

The Witness. I don't remember ever hearing any person talking about throwing vitriol.

The Lord Advocate. You said you had heard of vitriol being thrown; you reflected on it, and thought it wrong. I ask you when did you hear of its being thrown?

The Witness. No person ever spoke to me of vitriol being thrown. I have heard people talking about it, but not to me. They spoke to one another, and I overheard them.

The Lord Justice-Clerk. I have to remind you that there is such a thing as prevarication on oath, and that it is punishable. Keep that in view.

Lord Moncreiff. Did you hear of a man being hanged in Glasgow for throwing vitriol on another within the last few years?

The Witness. Yes: I recollect Walker being tried in 1827 for molestation of another man; but I don't remember the circumstance of the man being a *nob.*

The Lord Advocate. What molestation?

The Witness. I do not recollect.

The Lord Advocate. Was it for firing a pistol?

The Witness. I could not say: I paid no attention to it, and to nothing of the kind.

The Lord Advocate. Did it not strike you as an extraordinary thing at the time for a spinner to fire into the room at a *nob?*

The Witness. I thought it a bad action.

It being then nine o'clock of Saturday evening, the fourth day of the trial, a special order of adjournment was made by the Court, "that the jury be taken in the forenoon in proper conveyances to the seats usually appropriated for the judges of the Supreme Courts, in the High Church, and be taken out for the purpose of an airing in the neighbourhood of Edinburgh, at any time to-morrow, between the hours of eleven o'clock forenoon and three o'clock afternoon; they always being accompanied by, and remaining in charge of, one or more of the macers, and being strictly secluded from any communication with any person whatever, on the subject of this trial."

The fifth day commenced with the false evidence to an *alibi,* and explaining the minute about persecution.

Angus Campbell, cotton-spinner, stated, "that previous to

the strike there was a scheme of emigration entered into, and those who were to avail themselves of it were to get 10*l.* from the body, on giving a bill for the 10*l.*, under obligation that they would not work as cotton-spinners in Glasgow for the space of three years. If they paid back the 10*l.*, they were at liberty to work. If they worked without paying it back, the money was to be taken from them by legal means. They were to be prosecuted. William Johnston made a motion, the purport of which was, that as members had availed themselves of the 10*l.*, and violated their obligation, and gone to work, a prosecution should immediately be raised against these men."

The witnesses were in general rough, flippant, and unembarrassed. The following cross-examination of Campbell by the Solicitor-General is one example out of many: —

The Solicitor-General. If a strike took place by order of the Association, and a man continued to work for months, or years, could he continue a member of the Association?

The Witness. I cannot answer the question; for the case never came under my observation.

The Solicitor-General. Could he work a week against the strike, and continue a member?

The Witness. My own opinion is that he could not.

The Solicitor-General. What is a nob?

The Witness. There are several. A new hand that goes into a work, on a strike; he is usually denominated a *nob*. There are other sorts of nobs.

The Solicitor-General. What are they?

The Witness. I have seen a nob on a walking-stick.

The Lord Justice-Clerk. The jury will remember that answer.

The whole defence was founded in fraud, and supported by perjury. The explanation put on the word "Colliery" was, "I recollect one occasion, on which 40*l.* was granted as a loan to colliers, and it was entered in the schedules as a debt by them. The entry, so far as I recollect, was, 'Colliers' bill, 40*l.*' The money was borrowed, and the colliers had granted their bill for it. I did not know of the word 'Collieries' being in a schedule. I recollect that, about two years

ago, at a public meeting, an application was made for a loan of 50*l.* to another branch of the colliers, and that Hunter first brought it forward. That 50*l.* was granted on heritable security, and, during the last strike, intimations were sent from different branches of the colliers by deputations offering to give assistance to the spinners."

The members, it was pretended, took no oath, and never heard of any, and never saw a Bible in the rooms of the Association. As a proof of their clever hypocrisy, it was even suggested that a reward should be offered for the detection of Smith's murderers; but Hunter said that the finance committee could not afford it. The Association gave no information to the authorities regarding it.

The question of Mr. Robertson, "What did M'Lean say on applying for the certificate?" was objected to by the Solicitor-General. "What a pannel said cannot be evidence in his favour. It is no part of the *res gesta.* Suppose M'Lean had written a letter, in which, knowing that this certificate was to be obtained to enable him to leave the country after the commission of a great crime, he set forth false grounds for asking it, could that letter be received as evidence in his favour?"

Mr. M'Neill contended that he ought to let the jury know what occurred at the time when the certificate was signed by the prisoners, and why they did so? "We have proved that certificates of this kind were granted to men who were going abroad. I may prove that M'Lean, when he applied for it, did so upon the ground that he was going abroad. And this is certainly part of the *res gesta.* The inference which the prosecutor deduces from the certificate is a mere suspicion from the absence of explanation, and yet he objects to allowing the facts to be investigated."

The Court allowed the question to be put, but not departing from the general rule, that nothing said by a pannel can be evidence either for him or for the other pannels.

The witness having been recalled, said: "The reason assigned by M'Lean on applying for the certificate was, that he wished to go elsewhere, and look for employment. He had been several weeks on the strike, and had not received nearly

twelve shillings a week of aliment, and therefore the body was indebted to him, and the aliment was set against the debt. There was no common rule for drawing out such certificates."

The evidence that chiefly tended to clear M'Lean of the murder would not have been received in an English court of justice, — the declaration of a woman, since deceased, who said that she had witnessed the murder.

Helen Colvill, or Smith. "I knew a woman named Mary Wilson, wife of Allan M'Donald, labourer, and was well acquainted with her. She is dead; but I can't tell the date of her death. It was between a fortnight and three weeks after Smith was shot. She died of a fever, I believe. She was a quiet, sober woman as far as I know. I had a conversation with her about the person who shot Smith. I said, 'Good life, Mrs. M'Donald, a man has been shot.' She replied, 'Yes, Mrs. Smith, and I saw it done.' I then said, 'You'll know him then.' She said, 'No, she did not know him, but only his appearance.' I said, 'What like was he?' She said, 'He was a little man with dark moleskin clothes;' but no more was said of his description. She said the flash met her in the face, as she was coming up the street, and she ran after the man that had fired, as he went into a through-going close. She said she saw him trotting through it, and there she lost him. She said that it was a moleskin jacket he had on, and that he was below the common size of men."

One of the Association, called to contradict Christie as to the black gloves, proved too much, and dealt too largely in negatives. "He had been in the Association twenty years, and had never heard of *nobs* being molested by cotton-spinners. *Nobs* never were molested to his knowledge. It was no purpose of the Association to molest them at all. They were quite safe in the streets for anything he knew. He did not believe a *nob* was in any danger at all."

A curious fact was then given in evidence, that the bill containing an offer of 500*l.* reward was not put up till about three in the afternoon of Tuesday. If so, the statement of Christie as to M'Lean pointing at the bill at eleven in the forenoon must be false.

A portion of the body of cotton-spinners who accompanied M'Lean to Cameron's on the Saturday night, seven in number, then deposed to the *alibi*, and proved being in company with him at Cameron's till past midnight, and at M'Ilwraith's spirit vaults till one o'clock on Sunday morning.

The first who had signed the certificate was examined *in initialibus* by the Solicitor-General. "I was asked to sign a certificate about M'Lean about three weeks after Smith's murder, to satisfy M'Lean's friends and acquaintances that we were with him on the night of Smith's murder, till one o'clock and after it. I recollected, and we all recollected, where we had been with him. We all agreed that we had been with him at Cameron's from ten to within ten minutes to twelve o'clock, and that we had all come to that house from the Cross, and after we left it that we went somewhere else. This was talked of among us when we signed the certificate."

After this statement, the Solicitor-General objected to the admissibility of this witness. "You have not merely the existence of this certificate, but you have the four or five persons who sign it assembled in a room together. The whole story is agreed upon; the witnesses are tutored; they are examined in the presence of one another; they get a complete lesson of the sort of evidence that is required from them. And all this is done by the pannel himself or his friends."

Mr. M'Neill drew a distinction, ingenious but unfounded, between M'Lean's case and the others. "The other pannels are not alleged to have been concerned in the getting up of this certificate; and are they to be precluded from calling these witnesses, merely because M'Lean's father, anxious to assert his son's innocence, obtained from these parties a joint certificate instead of separate ones? If he has endeavoured, perhaps not in the most regular way, to get evidence, that is no reason why the other four prisoners should not be allowed to prove, not an *alibi* for themselves, but M'Lean's *alibi;* and it is a good defence for them that M'Lean was not at the place where, at the time when, the murder was committed. Though M'Lean was to stand up here, and confess that he was there at the time and perpetrated the murder, this could not prevent the other pri-

soners from proving their own case by their own witnesses. Nothing he can say or do, much less his father, can in any way affect them."

Lord Mackenzie, though with great doubt and difficulty, allowed the evidence to proceed, and Lord Moncreiff concurred, without expressing a deliberate opinion on the law, but intimating that where different parties are standing their trial together, and one of them is proved to have corrupted the witnesses, this renders them inadmissible for the others also.

Lord Cockburn delivered a sound judgment according to the Scottish law. "There is a doubt, perhaps I ought to say the shadow of a doubt, in the minds of the Court as to this question; and considering that the life of one man, perhaps the lives of five men, are at stake, it is right that we should give the prisoners the benefit of that doubt. For the sake of the law, however, I think myself called on to state that the whole feeling of my mind is strongly against receiving this evidence; and if I felt myself in other circumstances, and were obliged to decide what the strict rule of law on the subject is, I would most unquestionably, as at present advised, say, that the law required the rejection of these witnesses. Of all points in a case, the establishment of an *alibi* is the one in which the minds of the witnesses ought to be kept the most unprepared and untutored. There is nothing in the world so easy to be proved. If the witnesses are prepared even as to time and place, there is scarcely an *alibi*, however false, which may not be established. But here, within thirteen or fourteen days after a crime is committed, while one of the prisoners is in hiding and accused of that offence, some person, acting for him, gets individuals into a room together, and there a certificate is prepared, and they are all tied down to what they are to say, in expectation of a trial: and this certificate is so expressed that, while it binds them down to the fact that the prisoner was with them in the places mentioned at a certain time, they are left, as to all minute particulars, to the invention of their own fancy. Is it to be expected, after this, that you can get from these witnesses free and unconstrained evidence?"

The Lord Justice-Clerk had no hesitation in saying, that in the whole course of his experience on the bench, or at the bar, he never saw a case in which it was attempted to establish an *alibi* on such evidence as had been presented that day.

Of the laxity with which these *alibi* witnesses swore, the following colloquy between Andrew White and the Lord Justice-Clerk forms a specimen.

The Lord Justice-Clerk. I think you said that you remembered distinctly, before you signed the certificate, all that you have told us.

The Witness. Yes.

The Lord Justice-Clerk. Now, what do you say to the certificate bearing that you were in M'Lean's company till about two o'clock on the Sunday morning, when you told us you were at home about half-past one?

The Witness. The certificate is signed wrong in that, as I got home by half-past one o'clock. I never connected the murder with M'Lean till after he was apprehended, and then I recollected that it happened the night he was with me.

In answer to a question by Lord Moncreiff, witness said, "When I met these men and signed the certificate, M'Lean was in custody."

Lord Moncreiff. What if it should be known to the Court that he was not? Your certificate is dated the 3rd of August, and it has been proved to us that M'Lean was not apprehended till the 5th. Now, how did you come to connect M'Lean with that murder before he was taken up?

The Witness. I thought he was taken up. I could not be certain whether he was taken up or not at the time we signed the certificate, but I thought he was!

Another cotton-spinner, James Grieve, having sworn that he left M'Lean before midnight, the Lord Advocate read the certificate.

The Lord Advocate. Was that what was read to you and what you signed?

The Witness. Yes. But I am not correct as to two hours! I was only with him till twelve o'clock.

They contradicted each other, when cross-examined, in various minute particulars, faithful only to the Association,

regardless of their oaths; and it must have been with a sense of relief from painful pressure that Mr. Robertson at length exhausted the list of certificate-signing witnesses, and closed his case for the pannels.

The Lord Advocate then addressed the jury on the part of the prosecution in a speech that occupied four hours and a half, distinctly stating the law and describing the different crimes charged. He admitted fully that workmen might combine to raise wages peaceably, but not to compel others to refrain from work. "This prosecution was in defence of the labouring man, to defend the rights of workmen, and to free them from shackles imposed upon them, under the most false and hypocritical pretence. While this association pretended to be doing nothing but what was perfectly harmless, they were secretly and darkly carrying into effect, by the multitudes under their command, the greatest crimes. The deeds of violence and atrocity that took place in Glasgow for many years, surprised and astonished the country. They were so unlike the character of this country, and so different from the usual feelings of Scotchmen, that they astonished all who heard of them. The throwing of vitriol, the assassinating harmless and innocent persons, the shooting at individuals in open day, are acts which certainly took place, but which are so unlike any thing that we are acquainted with any where else, that it could hardly be believed that they had taken place in Scotland. They appeared still more extraordinary, from taking place without any apparent motive. The perversion of moral feeling which gave rise to them is now explained. They did not arise from personal malignity or resentment, but from individuals engaged in what they considered to be a common cause, which they were resolved, at all hazards, and by all means, to promote. Every step in crime was approved of, applauded, and rewarded by their associates. They became engaged in a secret and hidden warfare against others in the same condition, whom they were taught to consider their worst foes, and as the authors of the sufferings they endured. The progress that took place has been proved to you. When a strike was resolved on, the members of this association were reduced by degrees to

the lowest state of poverty and want. Individuals, in such a situation, view with abhorrence those whom they consider the authors of their distress, and commit crimes on which they would previously have looked with abhorrence. Here we have a great body of persons, all placed in the same condition, engaged in a strike, for the purpose of keeping up the rate of wages, and, if they can achieve this, they are entitled to do so. But look at their condition when they fail. Week after week they are reduced to greater distress. We have it in evidence that when the Association first commenced their strike, they had an aliment of 3*s.* in the week each man, which was gradually reduced to 1*s.* 6*d.* and 1*s.* in the week, and latterly to 9*d.* What a state of misery is this into which they were thrown! When the strike was first proposed and agreed on, how few would have been disposed to enter upon it, if they could have foreseen the result! When they could not accomplish their object by fair means, they became desperate; and they proceeded to attempt fire-raising—to the throwing of vitriol—the beating of workmen—to the attempt to burn and destroy mills—and to the sending of threatening letters; and finally to assassination.

"Every one of these charges has been established by an overwhelming series of evidence, which leaves no room for doubt as to the nature of the conspiracy. It remained for a long time in obscurity and darkness; it was carried on with the greatest skill and art, and those persons at the head of it endeavoured to conceal from all the power they exercised and the means they employed. Too wary to be surprised, the prisoners have avoided in their several declarations any fair, clear statement, and pretended ignorance of those measures which they were appointed to manage.

"By secret oaths they had enforced silence upon all the persons connected with their proceedings—800 persons, according to their account—and their dependants, amounting to thousands, and had in effect destroyed all the social principles which govern mankind. All men look for the applause and approval of those among whom they live; and therefore all men endeavour to attain a character for truth, honesty, humanity, and fair dealing in every well-regulated

society. But where thousands are combined in an unlawful object, all reduced to difficulty and actual misery, you have no longer over these men the ordinary securities for peaceable conduct. It is still worse if an unlawful oath has existed among them. If there is in an individual's mind the strong impression that he has taken a solemn oath which he is solemnly bound to adhere to, and that he would be guilty of a crime in revealing what this oath bound him to keep secret; there is a barrier in his religious scruples to the discovery of truth, the mind is sealed up and perverted. The question comes to be, will he keep his oath to his friends and associates among whom he lives, and whose ill-will and resentment he has most cause to dread, or will he act contrary to that previous oath in consequence of an oath administered in this court?

"It was necessary to go back to preceding years to ascertain the character of the Association—no one particular act would be sufficient to unfold its nature and show its power and influence, or give any adequate idea of the number and extent of its operations, and the means it employed to compel high wages, and deter new hands from daring to compete or better their condition. The workmen who have struck are led to consider their former employers as their bitterest enemies, and they regard those who agree to work, or *nobs*, as they call them, as actual criminals, against whom they may perpetrate any acts of violence they think fit.

"The prisoners' witnesses had tried to explain away the minutes by subterfuges and after-thoughts. Hunter, the president, knew nothing of what his witnesses knew perfectly. That was inexplicable to the president which they could clearly explain; and his attention being directed to the passage 'No. 60 shall receive 5*l.* for each of them they unshop,' he declares he knows nothing about it, and never heard of it before. He declares he never heard of a persecuting committee, and yet he had the Minute-book, and the entry in regard to it, before him; and yet they brought witnesses who knew everything about it, and who tell us that the entry about 'persecuting' was a mistake—that it should have been written 'prosecuting' instead of 'persecuting,'

and that it refers to the 10*l.* bills, which were to be put in force, in the event of the persons who had granted them resuming work before a certain period. The witnesses tell us, that every person belonging to the Association must have known that. How, then, does Hunter come to be unable to give so plain an explanation in regard to that entry as this? The truth, as it appears to me, is, that this ingenious explanation was invented long after the apprehension of the prisoners; and it is for you to judge whether the explanation, so given by these witnesses, is satisfactory. Not a single individual ever had been prosecuted.

"Then again, there is an entry of the 16th of June, 'Received from Thomas Gallocher, per William Martin, Townhead, 30*l.*' Hunter says in his declaration that he cannot explain this. This is a book which he must have seen; which shows the transactions of the society; and which contains the most important resolutions passed, when it appears that this secret committee was appointed. Hacket, the soul of the Association, was equally ignorant, equally uncommunicative.

"The declarations of M'Lean were still more evasive and contradictory. He is one of the few who acknowledge the Bible produced in the committee-rooms; but he denies that he ever saw it used in any manner of way, though he will give no account of the oath or ceremony used."

The Lord Advocate considered him as an instrument employed by the other prisoners for the worst of purposes. "His false pretexts and excuses for disguising his personal appearance and absconding, for writing out a certificate where he was on the night of the murder, betray the consciousness of guilt. Before running away, he prepares evidence against a charge of which he was not only innocent, but did not know that he was to be accused." The Lord Advocate then recapitulated at great length the evidence of the witnesses for the Crown, and insisted on there being full proof that Smith was murdered by the orders of the Association, and that M'Lean was the instrument on this occasion.

"Before he became the object of suspicion, M'Lean prepares to prove an *alibi*. He writes out a list—his father

employs another person to get the persons on the list to sign the certificate written out—and all this before he is apprehended; and his excuse is, that he had been accused of assaulting a person of the name of Millar, of Lancefield, years ago; and being accused of that, his friends thought he might have been accused of this other crime of murder, as well as of that assault, which had almost been forgotten among the number of outrages which were committed in that neighbourhood; and it was agreed, on this account, to have this defence prepared! This defence of *alibi* is certainly of rare occurrence in this court of late years. Once it was not uncommon, till it was discovered that little credit could be in general given to it. In a neighbouring country, where it was formerly more frequent, I believe it has come to be considered the most dangerous defence that can be resorted to. An attempt at an *alibi* never failed more signally than that which has been made in this case; and so great is the failure, that it is not likely that another of the same kind will ever be resorted to again, although persons accused have the peculiar advantage in this country, that the Crown cannot recall their witnesses, or adduce others to disprove the *alibi*, after the evidence for the prosecution has been closed.

"If false evidence be brought forward and detected, the opinion formed in regard to his innocence must be unfavourable to the accused, as none but a guilty person will endeavour to defend himself by deliberate perjury. A sketch of a certificate is drawn up to show that M'Lean was a mile and a quarter from the shot. One witness is wrong as to two hours. They agree in nothing but the dress. A funny song was sung, says one; no song at all, says another. They differ as to the kind of liquor they drank, whiskey or porter. Instead of being turned out at midnight, other persons came into the room, after they had left it, and remained there. But M'Lean has not only set up a perjured defence; he has confessed to Christie, who swears positively to the admission of the murder. How are murderers discovered when they escape observation at the time? They are usually denounced by their own recklessness, and by their exultation when their passions have been gratified. Whoever committed this

crime, did not do it from the ordinary motives for which crimes are committed. There was no attempt to rob this man. The person fled after committing the murder.

"It is clear that the deed of blood was done to intimidate other workmen, under the instigation of those who had the affairs of the Association in their hands. Mrs. M'Donald's story, not on oath, is very different from the evidence given by a person on oath, or who is under an impression of approaching death. When not on oath, persons may tell whatever stories they please, without feeling that they are giving false evidence in any degree. It is also sought to disprove Christie's evidence, by proving that the bill offering the reward, opposite to the shop, was not stuck up on the Monday, but on the Tuesday. It is, undoubtedly, a part of Christie's evidence that M'Lean made a sign, and pointed to the place where the bill was. Now, I wish you to look at this bill. You will observe that it bears the date, 24th July, 1837. We have therefore the best of all evidence as to the date of the bill, which is the bill itself. They wish you to believe that the bill was not put up till next day. But the best chance of discovering the perpetrator was the putting up of the bill immediately.

"Take all the circumstances that bear upon the murder, the preparation made by M'Lean for leaving the country,—the favour given him by the heads of the conspiracy,—his leaving Glasgow, and disguising himself by cutting off his whiskers,—his concealing his name, and assuming another,—his agitation when apprehended,—take all these circumstances together, with his preparation for proving an *alibi*, and his reference to the murder made to Dickson, and you have, I submit to you, complete proof that M'Lean was the perpetrator of the deed. One circumstance, not the least striking of all that bear on this part of the case, is, that when the officer told him the charge was murder, he made no inquiry as to the person whom he was charged with murdering."

In this summary, strong facts and weak are bound up together; circumstances wholly irresistible, and others quite inconclusive, without distinction. The most innocent may

be agitated when accused of murder; the most unconscious of guilt may not inquire the name of the murdered man, there being only one to inquire about. But how could he speak of the murder as Dickson proved he spoke, and act in getting up a lying defence as his confederates prove he acted, without being guilty?"

The close of the Lord Advocate's speech was feeble and jejune.

"You see the means which they possessed, struggling, no doubt, as they were, at one time, with want and difficulty, and reduced even to the miserable pittance of 9*d.* in the week; and yet, for such objects as I have mentioned, they have expended a sum of money amounting nearly to 12,000*l.*

"I submit, therefore, that you have evidence before you that these prisoners, the leaders and directors of this association, are guilty of the great and atrocious crimes with which they are charged in this indictment."

Mr. M'Neill, as counsel for Hunter, Hacket, M'Neil, and Gibb, then made an address on their behalf, shrewd, plain, and forcible. As the evidence for the prosecution had lasted four days and a half, it was not unreasonable that the Lord Advocate should speak for that number of hours. His main defence rested on a technical ground, the allegation being that they perpetrated the offence of murder by hiring M'Lean to do the deed.

"If, therefore, M'Lean is innocent, if he did not perpetrate the crime, if his was not the particular hand by which the deed was done, there is no charge of murder against the other four upon which any of them can be convicted; because the only charge of murder against them in this indictment, as it now stands, is a specific charge of murder committed by the hand of M'Lean. Mr. Robertson defends him, and if he satisfies you, as I have no doubt he will, that the charge of murder has not been established against M'Lean, then, of necessity, the other prisoners must be acquitted of that charge. But, apart from that defence, these four prisoners have this other defence in regard to the charge of murder, that, whether M'Lean was or was not the murderer, they are not at all implicated in the act.

"The shocking events that had commenced nearly twenty years ago did not affect the prisoners personally. They were then children, or mere boys; consequently, we could not be prepared, and we were not prepared, with evidence as to those acts, or as to whether they had or had not really been committed. Practically, it is impossible that they should not suffer grievous injury, in consequence of matters of this kind, substantive acts and crimes, being unexpectedly brought out in evidence,—acts and crimes for which they are not on trial,—matters of which they had no notice,—which, therefore, they could not possibly be prepared either to explain or rebut, but which, nevertheless, are calculated to excite strong feeling and prejudice against them. The public prosecutor has power to shape his accusation as he pleases. Men are tried for certain specific offences, said to have been committed in April, 1837, and, to support that accusation, evidence is called that other men committed other offences in 1817 or 1827. The prisoners are in this way made answerable, not directly, but indirectly, for offences not committed by themselves, but committed by other persons long before the prisoners, or at least some of them, had become cotton-spinners. Having described the charges for which the prisoners are not on their trial, let us consider what they have to answer — conspiracy, the sending threatening letters, and murder. The proof of M'Neil writing the threatening letters is mere guess and speculation. Men of skill examine the document, and imagine it to be his. So little, I believe, is that kind of evidence valued in the sister kingdom, that it is not received at all. Though secretary of the Association, none who knew his writing are called to speak to it.

"Let us now look to the charge of conspiracy. I admit all the deeds of violence, the receipt of threatening letters, invasion of private dwellings, the throwing combustibles, and the murder of John Smith; but the defence I make is this, that the persons for whom I address you had nothing to do with the perpetration of these offences. I deny the supposed hidden connection between them, and a supposed hidden power which no person ever saw and which no person dared

to, name; and I deny the proof of the appointment of the secret select committee.

"The day when they met is fixed with certainty, the 14th of June. Moat says he went to the meeting in Smith's tavern, at eight o'clock that evening. He has fixed the place, and the particular room, in which the meeting was held: it was in the kitchen, or general committee-room. He has fixed the nature of the meeting: he says it was a meeting of delegates. He has fixed the number, about forty. Not a human being supports Moat in this, and the prosecutor's own witness, Dickson, flatly contradicts it; he was in the chair, and at this meeting no such proposition was made.

"There could have been no such meeting held, nor any such proposal made, as those of which he speaks; and as there is no mistake as to the night, the hour, the place, or the nature of the meeting, it is clear that Moat states what is not and cannot be true. This absence of all proof as to the appointment of a secret committee in 1837 is most material, because the existence of that committee is the basis of the prosecutor's case. If there is no evidence of the appointment of a secret committee, how are the prisoners to be in any way connected with the acts of violence, which constitute the charges of this indictment? The supply committee is no way offensive; the fact of their having signed the certificate in favour of M'Lean is unimportant. If none but the secret committee could absolve him from the paltry debt of thirteen shillings, and in requital of some desperate service wipe off the debt, why should four sane men put their names to this free line in his favour; for no end but to identify themselves with that certificate of crime, to furnish evidence that they were the secret committee, and to afford to any one of 800 men a ready means of bringing their connection with crime to certain proof. Such a certificate, says the public prosecutor, is only given to those who perpetrate crimes. Strange, then, that M'Lean, on going away, thought it necessary to take with him a certificate of crime in his own name!—that instead of carrying with him a certificate apparently indicating honesty, he carries with him one bearing on the face of it the stamp of crime, branding him as

a criminal. And still more strange that the secret committee, whose names were so anxiously concealed that no man dare guess at them, should thus publish them in connection with the known *indicia* of crime, and all to save 13*s.* 9*d.* This story is absolute nonsense."

There was patent sophistry in this mode of viewing the case. The certificate would be a testimonial in his favour in England among those to whom he must present it; men of kindred feelings and wishes, whose liveliest sympathies would be enlisted in his behalf.

"None of the acts of violence are brought home to these prisoners, nor the attempts at fire-raising. The only pretence to connect any member of the Association with flinging the canisters, is the talk overheard by Campbell at the public-house. If not a mere dream, it tells more against the prosecutor than for him. It shows that the party who held the conversation alluded to were persons different from any of the prisoners, and it is utterly inconsistent with the prosecutor's whole theory of secrecy.

"All, then, that you have against the prisoners is this. They were members of an association which had a lawful object. In April, 1837, that association struck work,—that was not an unlawful act. The members of it received aliment,—that was not unlawful. The Association had a committee of supply, the objects of which were perfectly lawful; and of that committee the prisoners were members and office-bearers,—none of these things are the crimes charged. The prisoners are charged with being guilty of illegal conspiracy, and of certain specific acts of violence done under that conspiracy; and as to these there is no evidence, unless you are to hold that, because crimes were committed which were not otherwise traced, they must have been committed by the association of which these prisoners were members;—not that some person wrote a threatening letter to a man whom he disliked,—not that some person or persons threw canisters into a dwelling-house, and combustibles into a mill,—but that the Association appointed a secret committee, and that this committee hired men to carry these things into execution. I say that there is no trace of all this. It is an extravagant

inference to draw, and one for which there is no foundation in the evidence. I repeat that, excepting the allegations and the speculations of Moat, there is no evidence at all that the appointment of a secret committee was even proposed, and still less is there any evidence that any of these prisoners were members of a secret committee, or had any thing whatever to do with the various acts of violence which were committed."

Mr. M'Neill was less successful in his attempt to explain away the giving of such large sums of money as *aliment* to the relatives of those accused or convicted of deeds of violence. "There is nothing in the circumstance of aliment being given to those persons to show that the Association was thereby promoting crime. As every one is to be presumed innocent till he is proved guilty, nothing could be more natural or more proper than that an association, formed for the mutual support of its members, should give something to the wives and children of those persons who were unable to support them."

The endeavour of counsel to explain the minute seemed rather ingenious than convincing. "Our explanation of the passage is, that this '*persecuting*' committee was a committee to '*prosecute*,' and that the word ought to have been written '*prosecuting*.' Whether it is a mis-writing, or a poor play upon the profession to which I have the honour to belong, I do not know; but so it is that it is written, '*persecuting committee*.' We have given you our explanation of what it ought to have been, and that explanation is supported by a variety of circumstances. I observe, in this book, abundance of errors in orthography—in one place, now before me, turned up by accident, I see three such errors, and one total perversion of meaning, in the short space of five successive lines. There is nothing illegal on the face of the schedules. The only entries in them to which any importance has been attached, are those of 'Expenses of Guards' and 'Expenses with Nobs.' These entries are perfectly accounted for by the application of these sums to the providing of refreshment for the guards, and to the payment of aliment. Although the appointment of guards was not illegal, and although no guards were proved to have com-

mitted any acts of violence, the Association most readily and most properly resolved to withdraw the guards, and that resolution was immediately published, so as to give it every possible degree of efficacy. This is a strong proof of the sincerity of the Association — but the Lord Advocate, proceeding by the rule of contraries, says, that it is a proof of *insincerity*. If you use your influence to assist the authorities, why then, says the Lord Advocate, I will convict you, because you thereby show that you have influence over the individual cotton-spinners. If you give the authorities no assistance, I will convict you, because you have not disclaimed your participation in the acts of violence committed. What then are we to do? If we do nothing, it is a proof of guilt; if we hold our tongues it is a proof of guilt; if we deny guilt, it is another proof of guilt; and if we use our influence to assist the authorities in putting down disturbances, that is an additional proof of guilt. What are we to do? — what can we do, that will not, in his Lordship's opinion, indicate guilt?

"These prisoners are here charged with hiring M'Lean to go forth and shoot Smith. Has this been proved? Has there been any evidence whatever that connects them with such a proceeding? If the evidence adduced is sufficient to connect them with this murder, it would equally convict the eight hundred other cotton-spinners, all of whom, with equal justice and propriety, might, and still may, be put upon trial for their lives for that capital crime. Where is the proof of their hiring and engaging M'Lean to commit the deed? Are they brought into contact with him in any way? Has the prosecutor brought M'Lean into personal communication with these prisoners? Has he brought evidence to show that M'Lean had interviews with them in secret places, — that there were whisperings, or other suspicious appearances observed passing between them? Nothing of the kind. Is there evidence that the prisoners were in company with M'Lean before the act? — or that he was in their company after the act? None whatever. There is no evidence that M'Lean was ever seen in company with these persons at all, excepting at the time the certificate was granted to him on

the 11th of July. The theory of the public prosecutor is, that the Association were to take the passage for him. The murder was committed on the 22nd, and the vessel was to sail from Liverpool on the 24th. Nothing could be more opportune. Why then was not his passage taken in that vessel? This story, therefore, turns against the prosecutor; for it shows that the Association had the means, and knew they had the means, of sending M'Lean away if they had the disposition to do so. Had M'Lean been the instrument of the Association, would they not have sent him away? Assuredly they would — and as assuredly they did not send him away. *

"I can believe that some individual cotton-spinner, oppressed, and goaded on by want and despair, — acting under the impulse of desperate and misguided feelings, or perhaps having some cause of personal enmity against the unfortunate man Smith, may of himself have perpetrated this deed. It was not a deed which required many heads to contrive it, and a separate hand to execute it. It is possible that one who was connected with the particular work in which Smith was employed, may have both conceived and accomplished it. Breathes there the man, so confident of his own powers of discernment, as to say this case is free from doubt? Are you, then, to seal the doom of these prisoners in the dark, or to accept of suspicion as a substitute for proof? Are you so impatient of blood, that you cannot wait till the truth is revealed, as it must one day be? or are you so weak as to dread that when it shall be revealed, you may, perhaps, be exposed to the reflection of having allowed the guilty to escape, and to walk abroad as living evidences of your want of penetration? In the fulness of time the voice of truth must be heard, and it may one day ring a fearful peal in your ears, if you act rashly now. Yes, when Time, the great revealer, as well as the great destroyer of all things human! — Time, which brings to light the darkest transactions that the craft of man has vainly endeavoured to bury in perpetual obscurity, just as surely as it moulders into nothing the proudest monuments by which man as vainly endeavours to perpetuate the memory of his own perishable name! — when

that great agent of Omnipotence shall have shed its illuminating influence over this dark transaction, and exposed its deepest depths, — when each of these men, who now in vain asserts his innocence, and implores justice, shall have suffered the unmerited anguish of your condemnation, the horrors of the condemned cell, and the ignominy of a felon's death, and shall have transmitted a hated and a blighting name to a helpless and unoffending progeny, — when the tempests of winter and the sun of summer shall have passed alike unheeded over their unhallowed graves, and the revolution of these seasons shall have brought the return of your duties, and again placed some of you in that seat, to administer justice on the real delinquent, the true murderer, then detected, — not as now, groping your way amidst the darkness of mystery, and doubt, and error, but walking in the full, clear, and safe light of truth then made manifest — perhaps, with your own ears hearing from the lips of the culprit himself the penitent confessions of a conscience become unbearable to the midnight assassin, because of his participation in the still deeper tragedy of this night, in which you too are asked to play so prominent a part, — his silent acquiescence in the shedding of the innocent blood of these men, with which you too are about to stain your hands, if you yield to the demand that has been made upon you — what then will be your feelings? what your reflections? You will not, I know, have any cause to upbraid yourselves with having returned a verdict which, at the time, you did not sincerely believe to be in accordance with the truth. Your own consciences, I know, will acquit you, and rightly acquit you, of that sin, whatever may be the opinion of the world, — just as their consciences now acquit them, on this their day of trial, and would do, even if it was their day of doom. But although you escape self-condemnation on that score, you cannot possibly escape the bitter, and painful, and humiliating reflection, that presuming — vainly presuming on your own penetration, you thought you could discover that which had not yet been revealed to man, and with rash and impious hands had endeavoured prematurely to rend asunder the veil of mystery, which, in its inscrutable wisdom, Provi-

dence had interposed between you and the truth of this deed of blood."

Mr. M'Neill closed his pathetic speech at eleven o'clock at night. On the seventh day, Wednesday, 10th of January, the Court met at ten o'clock, when Mr. Robertson, as counsel for the pannel William M'Lean, commenced his eloquent oration by reminding the jury that for the last seven days they had been secluded from all intercourse with society, and had been engaged in an investigation unparalleled in its extent in the judicial annals of this country. The object of that seclusion from society had been that they might, under the solemn oath which they had taken, and upon a fair and impartial consideration of the whole evidence, return such a verdict as should do justice to the law and justice to the prisoners. They were not to allow any fear of consequences, any consideration of the past, any anticipation of the future, to enter for a moment into their minds, so as to disturb them in the calm and honest consideration of the evidence adduced. Fearless of the consequences, regardless of the past, excepting what this evidence discloses, weighing nothing but the evidence, and the remarks which would be addressed to them from the bench and bar, they were to enter into the consideration of their verdict.

Mr. Robertson admitted that his was no easy task in directing their attention to the case of the unfortunate man M'Lean; "for to say that this was not a case of difficulty, perhaps of suspicion, would be to insult your understandings and to degrade my own. After seven days of daily toil, and some nights of perhaps uneasy rest, he stood before them to complain of the peculiar hardship which the prisoner inevitably sustained. They had heard in this investigation of the fire-raising in 1818 in Broomward's shop; they had heard of the murder of Widow M'Pherson; they had heard of the shooting at M'Quarrie in 1820; they had heard of the scandalous offence of throwing vitriol at Cairnie in 1821; they had heard of the shooting of Graham in 1825; the assault on Margaret Banks in 1826; and the firing into Brown's house in 1827; a catalogue of offences enough to appal the heart of any man; yet they had, in addition, the conspiracy

to set fire to Hussey's mill, and the attempt to set fire to it, — molestations at the Adelphi, — assaults on Gray and Kean, — the writing of threatening letters, — the invasion of Michan's house, — the attempt to set fire to Wood's house, — and, to sum up this dark list, the base, the infamous, the damnable murder of the poor man Smith. Is not this enough, then, to make the mind even of the firmest tremble? But, Gentlemen, beyond this catalogue — and greater, even although you were to add to it many other assassinations — beyond this catalogue there is one calamity still more dreadful, which I trust shall never be added to the list. It is, that a man not proved to be guilty by evidence clear, convincing, and unexceptionable, shall, by the verdict of a jury, suffer the death of a felon on a common gibbet. Of all murders which the heart of man can conceive, — of all slaughters, I should rather say, that of the judicial execution of an innocent man is the most fearful. Therefore, I beseech, I implore you, — by your oaths I *command* you, to enter upon this investigation, fearless of the consequences of your verdict, so far as further outrage is concerned, and resolved to look at the evidence, and at the evidence alone."

Before proceeding to analyse the evidence, the accomplished orator denounced the introduction of those maxims of political economy on which the Lord Advocate had dilated.

"Policy, practical expediency, political economy, cannot enter in at this gate; it is law, and evidence, and truth that you deal with. Banish, then, all these other matters from your minds. I ask no mitigation for the prisoners, because their lives are spent in so hard and laborious a trade, — I ask no indulgence, because they breathe the heated atmosphere of cotton-mills — amidst those scenes of hard labour, and, alas! too often of vitiated morality, to which its inmates are exposed. I ask no indulgence on these accounts. But, on the other hand, I solemnly protest, that expediency, — and the security of trade, — and the employment of capital, — as to which we heard so much, and the protection of all these for the benefit of the lower classes themselves, shall equally be shut out of this investigation. It is combination with violence that you are to deal with; — it is combination ac-

companied by assault; — it is combination accompanied by the invasion of dwellings; — it is combination accompanied by fire-raising; — it is combination accompanied by murder. That is the subject, and in such a solemn inquiry, away for ever with all political discussion. By political, understand me, I do not mean the comparative paltry distinction of party strife; I mean the higher politics which originate in love of country, for which I give every honest man credit. But away with even that consideration, in the administration of justice. Evidence and truth, in regard to the prisoners, and in regard to the particular charges on hand, are all that you have to look at, — all that you justly dare consider."

In his peculiar vein of banter and pleasantry, Mr. Robertson ridiculed the importance attached to the election of three secret delegates by a dark moving power. "They were chosen by tossing their names into a hat; the secret mode of election, that dreadful thing called *the ballot*, so appalling to the ears of the learned Lord. The mighty debt of thirteen shillings was regularly entered in the books, books beautifully kept as they saw; and this debt is proved by only one witness. Anything more inconclusive than this it is difficult to imagine." He argued with much force and cogency that "there was no evidence to convict M'Lean of the separate crime of conspiracy apart from the murder, and that Christie's stories were absolutely ludicrous; that it was almost impossible to deal with them without laughter. I say such an appalling account of crime and such ludicrous stories never came from the mouth of any witness. This bold-faced villain, — this Pierre of the conspiracy, — this Pistol of the Association, — this braggart is bawling out in the public streets of Glasgow, 'I will do for him.' Christie answers, 'Whist! do not speak so loud! my character is at stake! I am Christie the pure! I had some intention a fortnight ago to go to America. I have changed my resolution, I do not know why. My character is at stake. The credit of my house in the Gallowgate, — the refuge for all the respectable of the trade, is at stake, and the credit of my hotel on the other side of the water is at stake! Take care, do not speak about Arthur.' 'But I *will* do for him, — here is the pistol,

I *will* do for him!' rejoins the other, loudly. There was no assault on Arthur. 'He knew d——d well where Arthur was.' I suppose he was snug in his bed; but Pistol and Bardolph were ready to go to his bed-chamber, and drag him out for the purpose of the assault; and here the tale terminates.

"Bear with me, Gentlemen,—I have thrown off my black gloves, in case you should have suspected me of something wrong. Now for story *second* before the murder,—the story of the black gloves! And of all the absurdities that Christie has invented, this is the most ridiculous. A black glove comedy in two acts! Borrowed and returned! These gloves, I thought, when they were so returned, were to be proved to have been stained with blood, or to smell of gunpowder. I thought they were gloves meant to have been used, either to steady the hand of the assassin, or to protect the hand of the fire-raiser. I thought we were to hear that they came back with some mark on them, showing the infamous purpose to which they had been applied. But they are returned just as they had been lent, and accompanied with their return, a story is narrated, unequalled, in point of mystery and horror, even in the darkness of romance itself. They are returned, however, with a story—what it is I cannot tell—of breaking into a house,—of a woman on her knees, her hand round her husband, crying for the 'love of God,'—just as Christie does,—to take away the vision of the black gloves from her eyes. And no wonder that she so cries out—no wonder, says M'Lean, when she saw such ruffians as we were, armed *cap-à-pie*, the very image of her husband's murderers, with black gloves on our hands, with blackened faces, I suppose, and with hearts as black and foul as 'Vulcan's Stithy.' Gentlemen, is this a credible or intelligible story?

"The tale of the purchase of the bullets is equally vague and inconclusive. Because certain cotton-spinners bought bullets of a particular number, therefore, one of the same number being found in the body, it is clear that it was one of the bullets bought at Sheriff's; and, secondly, it is clear that, as they are cotton-spinners, it was bought on behalf of the prisoners. Gentlemen, is the word cotton-spinner to convict M'Lean of murder? Excepting that word, you

have nothing to connect him with the purchase of the bullets. Campbell's story is a strange one, if there be such a thing as a secret select committee, the theory of the prosecutor. The secret committee is the moving power of this mighty and infernal engine, by which men's lives and property are in danger. Their names are to be unknown—their victims unproclaimed. It is to them matter of indifference who shall fall under its pressure, but, like the wheels of Juggernaut, it is to crush all that comes within its range. And this *secret* committee,—working in silence and underground, doing its bloody business wheresoever it listeth,—is to keep all dark and secret. And, therefore, on that night, in a common tavern, which the committee do not frequent, cotton-spinners, not the prisoners, not connected with the prisoners, in their cups, are muttering destruction in the public room, so as to be overheard by a stranger sitting at the opposite side of the table, and are proclaiming, for the purpose of disclosure, 'This is the night,—the hour is approaching when the days of Smith shall be numbered!'

"Strangers, in their cups, talk and swagger about what should be a great mystery, and Smith, on his way home, is basely butchered. And, Gentlemen, I cannot, I must not, I dare not pass this part of the case,—I that am counsel for this man, unjustly, as I think, accused,—I cannot pass this part of the case without shedding one tear over this deed of blood. We have heard of murder done from malice—we have heard of murder done from avarice—we have heard also of murders done that the bodies of the victims might be made the subject of profit. But I do not think that any of these murders is more base, or more infamous, than this! It was a murder, perpetrated on this poor man, who had finished his week of labour in the toilsome occupation to which Providence had destined him, and who was entitled to lay his head for one night on his peaceful pillow, and to look forward to the return of that day, when even the weary artisan is entitled to repose—is entitled to repose of body and rest of mind, that he may dedicate to his God one day of the week, and pass some hours without bodily fatigue, if not without mental solicitude. At that moment the cowardly

assassin, lurking behind, draws the fatal trigger which hurries this honest and toil-worn artisan, in a very few hours, to the presence of the God who made him, and terminates his earthly career of toil and care. But, Gentlemen, the more base, the more unprincipled, the more inexcusable this deed of darkness is, the more are you called upon not to convict, unless your minds be overwhelmed by evidence of which no doubt can be entertained.

"Gentlemen, there were several people in the neighbourhood of the place where the deed was done. Some live. One has departed; but although she has departed, truly her voice still speaketh from the tomb. And it is a consolation that the law has allowed, despite of objections, had they been made, that voice to be heard, which cometh to your ears in notes so clear, and toucheth your hearts in a manner more affecting, than had it come from the living lips of the witness herself. Smith's dying declaration bears, that he had been taunted by a man of the name of M'Grady. I do not read the words, but I state them accurately. He thought he was to die because he was a nob. He had been taunted by M'Grady. This very M'Grady, Arthur M'Grady, is seen by Mrs. Smith in the vicinity of the place where the shot is fired. Do not imagine that I am saying M'Grady is the murderer, but look how easy when suspicion—that *hated* word—how easy when suspicion first comes into the mind, how easy it is to conjure up circumstances against any man. M'Grady had taunted him—he is seen by Mrs. Smith in the vicinity of the spot, and yet we have no suspicion against M'Grady; we hear only of suspicion against M'Lean.

"But, if you believe a true account is given of what Mrs. M'Donald stated, who had no interest in the matter, and who is now unhappily removed from your sight, I say the case is at an end. What was her account of it? *The dress and stature of the murderer in no degree corresponded with M'Lean.* Mr. Smith said, 'She told me he was *a little stout man*, with dark moleskin clothes, jacket and trowsers of the same.' This comes out when he is cross-examined. Then we call the wife of this witness. She was in the list of the witnesses for the Crown, but not called by the prose-

cutor, on account, I presume, of that cross-examination. Mrs. M'Donald told her he was a little man, with dark dirty moleskin clothes, and that he was below the common size of men. M'Lean is *above* the common size of men. Stand up! —[*Here M'Lean stood up.*] He is taller, I believe, than any of the other prisoners.

"Says my learned friend, the Lord Advocate, this must have been a mistake on the part of Mrs. M'Donald; she may not estimate the height of men as others do,—she may have been mistaken. God help us, Gentlemen, will this do? Is every thing a mistake that tells in favour of the prisoners? She is the only eye-witness, she is an unsuspected witness, not our witness, and she was not placed there by the man who did the deed. She is not a conspirator, I presume, on the one hand, and, on the other, she has no reason to say any thing favourable or unfavourable. She has gone to her account, and are you to believe that, without cause,—on a subject so momentous—after she knew that a man's life depended on it,—and on the day that Smith expired, she gave a wilfully false account of the matter? No—before she knew that the committee was apprehended, she stated this, she stated it repeatedly: her account was consistent, her story hung together. It is destructive of the idea that M'Lean fired the shot; the dress is different, and the stature of the murderer was below the common height of men, while M'Lean's is above it.

"According to the theory of the Crown, it is all perjury when what is sworn tells for the prisoners, all truth when for the prosecution. Throw but the word 'conspiracy' into the indictment, and then every argument in law becomes unanswerable, every statement, in fact, for the prosecution, becomes credible! Have we lived to hear such doctrines even imagined? are we on a fair trial? are we living in a free land? Is this a British Court of Justice? are you a Scottish Jury? and will you take such an account of the matter? I know you will not."

Mr. Robertson agreed in reprobating the getting up a false certificate. He knew that it was dangerous ground for him to tread on, and hastened to escape from it, suggesting,

in his retreat, the best apology that could be made for conduct all must condemn. "I reprobate, as much as any man, the getting up of such certificates. They never can serve the purpose for which they are intended. But in that status of life, in that condition of society, there may be acts done by an anxious father or an over-zealous friend, which stern justice and strict law must reprobate, but which humanity and common sense will overlook. And, above all, be the acts done as improper as you please, they are but a circumstance, they amount to but a circumstance, against the parties accused. It is not upon such acts of impropriety,—it is not, if you please, upon such acts of immorality, viewed not always by the lower class of society with that strictness with which they ought to be considered,—it is not on these that the life of a man shall depend. It may be wrong, but all that follows is this—you are to probe deeper—to probe to the quick. And tainted as that evidence is, it still comes to you. It is stamped by the hand of law as wrong, but not with the stamp of exclusion.

"The supposed contradictions in the seven witnesses to the *alibi* were most futile. They cannot recollect where they sat—whether the door was on the one side of the room or the other. Some of them do not know, and others think it was in a corner. Some of the questions I could hardly follow myself. I doubt if I were asked as to any Christmas holidays (except the present), who was present at any party of which I formed one, whether I could give a distinct account of it, or tell who had sat opposite me, or beside me. This Christmas I shall not soon forget. But who can remember such trivial circumstances as those put on the cross-examination? All agreed it was about twelve when they parted. M'Lean sung a song, says one—others do not recollect the fact. Gentlemen, are the hours of festivity and merriment made the subject of close regard and rigid reminiscence? Are all the things we do set in a note-book and remembered? If so, many of us may be ashamed of the songs we have sung, and many more may have forgot their meaning. I have heard that songs are sometimes sung, in which meaning is not, and which carry nothing to the mind,

however they may tickle the ear. But if all this is to be proof of inconsistency, of perjury, God help the singer, God help the hearers! Then, they all agree that the whiskey came in in a half-mutchkin stoup. Some of them forget the porter; and some of them declared there was no eating, but, behold, there was a biscuit!

"It was well on to twelve o'clock when they went to M'Ilwraith's. They had no reason to go away from Cameron's, as they were going still to drink; they were not done with their orgies; their wretched aliment was not yet all spent,—a bad way of spending it, I admit. They go to M'Ilwraith's. M'Millan says they left Cameron's at half-past eleven o'clock. Be it so. The murder was a-doing at that hour a mile off. M'Ilwraith, who has nothing to do with them, proves that M'Lean came there at twelve o'clock. With the rest of the evening we have nothing to do. The curtain of the tragedy had dropped in Clyde Street, at twenty minutes past eleven o'clock.

"M'Lean is supposed to confess the murder to Christie at eleven o'clock on the forenoon of the following Tuesday, and then occurs this odd mistake. You recollect that Christie swore decidedly that the conversation was at eleven o'clock,—the important confession. M'Lean said, 'There is a reward set on me.' 'Yes,' says Christie, '50*l.*' 'No,' rejoins he, '500*l.*,' pointing to the placard opposite the shop at eleven o'clock. It was eleven o'clock, as he most expressly swore. You cannot get out of that. Reevie, the bill-sticker, proved the bill was not stuck up till after *three o'clock.* Ah! but says my learned friend the Lord Advocate, the bill is dated Glasgow, 24th of July. Tuesday is the 25th, the bill is dated on the Monday, therefore Reevie is mistaken as to the day. Gentlemen, look at this. The bill bears:—'Whereas, on the night of Saturday last, the 22d July current, between the hours of eleven and twelve o'clock, John Smith, cotton-spinner, was wickedly and maliciously fired at by an assassin, and is *since dead.*' The medical certificate bears on the face of it, 'Report of the inspection of the body of John Smith,' who died at five o'clock of the morning of the 25th of July. So says the indictment. Here is a specimen of written

evidence,—here is a specimen of accuracy,—here is a document on which a man's life is to depend. This Christie, on the Tuesday, points to the bill at eleven o'clock, which is not issued till three o'clock. Oh! says the prosecutor, it is the wrong day, the bill is dated the 24th. Their own bill is like their own witness. The bill bears that Smith is *since dead.* He did not die till the 25th. Reevie is right, the *bill is wrong,* and Christie is wrong. He makes no communication to the public authorities. He cannot answer my question, why he did not. He remains unable to answer it, when pressed. He is then at last helped out of his difficulties by my learned friend, and remembers it would not have been safe to inform. He talks of a number of foolish things. He talks of the three days of darkness; he could mention no other foolish thing. You, however, have heard every thing; you saw his manner; you know the reward; you know he said all this to the Procurator-Fiscal, and you know his history.

"M'Lean, I admit, when apprehended, did not give a clear explanation, but he was not likely to have all his senses about him. No man in the situation in which M'Lean was, with the knowledge of accusations against him, can stand the sifting nature of an examination used in making out a prisoner's declaration, however innocent he may be. He had injudicious friends, whose acts make his conduct still more difficult to be explained. And there are questions put, which I admit have not been explicitly answered. All this, however, is of slight avail.

"I put it again to you to say,—is this murder *proved?* I confidently submit that it is not. There are two things which, in a court of justice, never must be named but to be reprobated,—the one of these is fear, the other is suspicion. Fear that crime shall go unpunished is no reason for convicting without evidence. Gentlemen, we have had an appalling picture drawn by the sheriff of the state of Glasgow, and at the outset I called your attention to the number of outrageous acts mentioned and gathered together in this inquiry. Gentlemen, I think he stated that there was reason to believe these dangers were now terminated. Gentlemen, for the purposes of this inquiry I care not whether they are

terminated or not. As a free citizen of this state, I trust in God that they are at an end. But I repeat, that for the purposes of this inquiry I care not. I am certain that the fear of consequences is not to affect you in the verdict which you shall return. No, though the fabric of the constitution itself shall be undermined, though 'temple and tower go to the ground,' let the pillar of justice still stand unshaken, and amidst the darkness, and the desolation, and dismay of revolution, let the flower of truth still blossom in the wilderness. And, as to *suspicion*, it has been said by one of the noblest of created beings, that 'suspicion sleeps at wisdom's gate.' Gentlemen, you have entered the gates of the Temple of Justice, and at these gates also does suspicion lie dormant. You must not only think no ill, where no ill is, but you are bound to think no ill, where no ill is proved. And last of all, let me implore you, now that my lips are about to be closed, and the last words which can be uttered in favour of the prisoner are to fall upon your ears—let me beseech you fearlessly, manfully, like Britons, like Scotchmen, to throw fear and suspicion away, and to return that verdict, which you shall answer for to your God, and which, if it be not in favour of the prisoner, can only be pronounced, when you are satisfied that it is supported by evidence leaving no rational doubt upon your minds of the guilt of this man. If you do otherwise, I conclude by repeating, that a more fearful and a more tremendous slaughter than even the murder of Smith, shall be committed by that judicial execution."

It will be unnecessary to recapitulate the very minute and elaborate summing-up of the Lord Justice-Clerk, which occupied thirteen hours. He let the jury clearly infer as the intimation of his opinion, that the minor conspiracy, charged to keep up wages by threats, intimidation, and acts of illegal violence to the persons of masters and workmen, was proved; that the heavier conspiracy of keeping up the price of labour by fire-raising and murder was not fully proved. The evidence of M'Neil writing the threatening letters, he considered too weak to found a conviction upon. If Christie was a perjured witness, the charge of murder was

also at an end. Even if they did believe him, there was no sufficient evidence affecting the other four prisoners that they had hired him to commit the deed. If Christie should not be deemed perjured, the getting up false certificates and attempt at *alibi* told strongly against M'Lean as the actual murderer. "A case," he said, "of greater public importance has seldom or never been brought before a jury."

Immediately on the close of the charge the jury retired, and, after remaining inclosed for five hours, returned into court, when their chancellor, Mr. Redpath, said, —

"My Lords, the jury have, by a majority, found the charges Nos. 1, 2, 3, and 10, against all the pannels proven, and they have unanimously found the rest of the charges not proven."

Between eleven and twelve on the night of the eighth day of the trial, after the most impressive statements of their reasons for imposing so serious a sentence, the Court adjudged the prisoners to be transported beyond the seas for seven years.

"Their crime consisted in not permitting other working men to sell their labour, and to be satisfied with lower wages than they had determined themselves to obtain. They denied to others the liberty which was conceded of disposing of their manual strength and skill at their own free will and pleasure, and wrested from fellow-workmen their sole property, the disposal of their labour. There are masses of people," said Lord Cockburn in his animated address at Glasgow, "who set themselves up as dictators of the market of labour; and who have the audacity to band themselves together in defence of this tyranny. These persons not only abstain from working themselves, which the law leaves them at liberty to do, but they proclaim that nobody else shall work for less; and if their insolent mandate be disregarded, they enforce it by violence, and then declare themselves the friends of free trade. How anything so iniquitous and absurd should ever enter the minds of the educated people of Scotland, has always appeared to me incomprehensible."

The prisoners, most eloquently defended and accused by reluctant witnesses, only just missed a total escape, the bare

majority of *one* convicting them of the conspiracy to intimidate by violence. But the whole working of the system was brought into open daylight, and a lesson taught by which the shrewd intellects of the Scottish workmen have largely profited. The judges, when fixing the amount of punishment, seven years' transportation, on the five convicted ringleaders, denounced the enormity of their guilt in the most clear and forcible language. It was thought by many, as the majesty of the law had been vindicated by a verdict of guilty, and as the convicted cotton-spinners had been acquitted of the more grave and heinous charges, and as the sentences of the judges appeared to produce a great moral effect, that a remission of the sentence would be expedient. The justice of this reasoning may be questioned, considering the systematic amount of blood-guiltiness actually proved, the deliberate nature of the offences, and their widely spread mischief. A general and more kindly feeling prevailed, however, in favour of the defendants. The barristers who defended them took the strong and unusual course of presenting to the Queen a memorial, praying for mitigation of punishment. The minority of the jury also signed a petition declaring, that in their opinion none of the charges were proved, and begging for mercy.

NOTES TO THE TRIAL OF HUNTER AND OTHERS.

Note 1.

The words Ashdod and Armageddon seem to have been chosen for their solemn sound, filling the ear of the workmen with something mysterious and grand. Country gentlemen were accused, in Sir R. Walpole's time, of cheering in the House at the names of Moldavia and Wallachia. They applauded them as an unknown tongue, terms of a strange vocabulary, which must be fine. The explanation of Dr. Wordsworth, in his Exposition of the Apocalypse, p. 450., would give indeed a more definite meaning. "Armageddon is not any spot in Judæa or in Italy, but wherever men associate themselves in a league of ungodly polity." Texts denouncing wrath from the inspired Prophets have always been favourites with the working classes when seditiously disposed. The Luddites took for their watch-word the verses of Ezekiel, ch. xxi. ver. 25—27.: "And thou profane prince of Israel, whose day is come, whose iniquity shall have an end,

thus saith the Lord God: Remove the diadem, and take off the crown; this shall not be the same; exalt him that is low, and abase him that is high. I will overturn, overturn, overturn it."

Note 2.

The proof from the bullets was in this case slight and incomplete. On the trial of Brookes, a poacher, at Chester Assizes some years since, for murdering a gamekeeeper, the corroborative evidence seemed curiously convincing. In Brookes's shot-belt there was found a quantity of shot of various numbers mixed together; a large quantity of shot No. 2. and No. 6., and less of No. 5., about the same quantity of the intermediate numbers. The keeper had been murdered by the contents of a double barrel placed close to him; and the large quantity of shot of different numbers found in his body exactly corresponded with the proportions in the belt of the poacher, the No. 2. and No. 6. being numerous, and the No. 5. rare. He had threatened to be avenged of the deceased for informing against him, and had been seen to run quickly from the place about the time of the murder; but, in a case of life and death, the jury thought these corroborative circumstances, remarkable as they were, insufficient to convict.

Note 3.

The dramatic effect produced by Mr. Robertson desiring his client M'Lean to stand up, when he rose six feet, the murderer having been described as a little man, was equalled in a case on the Western Circuit, of less importance, but where the *dénouement* was at least as startling. It was a case of larceny; and the prisoner's guilt had been brought home to him by the footmarks of two feet traced from the place of the theft to his dwelling. His counsel had, to the surprise of all in court, cross-examined minutely as to these footmarks; their length and breadth, and the depth of impression; and when the prosecution was closed, laughed the case out of court by desiring the prisoner to show his nether extremities to the jury. He had a wooden leg!

Note 4.

In the habit of cross-examining prisoners, the Scottish differs most materially from the English law, greatly to the superiority of the latter. It is no doubt an important engine in extorting truth, but a species of torture, putting the mind on the rack and the memory in thumb-screws. Monsieur Cottu, in his animadversions on our criminal system, heartily approves of the English forbearance, as contradistinguished from the French inflammatory method of plying the prisoner with questions.

Note 5.

The effect of a just and impartial trial in calming down the passions of an excited population, was strikingly manifested in the present instance.

It had taken months of preparation. The indictment occupied twenty-six quarto pages, and the names of ninety-one witnesses were given. 1000*l.* had been subscribed by the operatives for the defence, and every effort was made to detect guilt on the one side, and for proclaiming innocence on the other. Impatient at the delay, the cotton-spinners petitioned parliament by thousands, and passed resolutions that justice could not be obtained by law. At a public meeting at Edinburgh, a barrister ridiculed the discussion previous to the trial as a farce got up for the five hours' entertainment of five Whig lawyers on the one side, and five Tory lawyers on the other, having five judges as umpires, and five innocent men the subjects of the entertainment! During the proceedings, the Rev. Mr. Stephens, of Ashton-under-Lyne, thus harangued the excited spinners at Glasgow. "We have sworn by our God, by heaven, earth, and hell, that from the east, the west, the north, and the south, we shall wrap, in one awful sheet of devouring flame, which no army can resist, the manufactories of the cotton tyrants, and the palaces of those who raised them by rapine and murder, and founded them upon the wretchedness of the millions, whom God, our God, Scotland's God, created to be happy."

Though thus inflamed by incendiaries, and fed with stimulants as their daily food, the workmen were satisfied, at the close of the eight days' investigation, that a fair trial had been had; they petitioned indeed for mercy in vain, the counsel for the defence signing the petition; but the political agitation died away, and the Association in Scotland received a blow, from which we may hope that it will never rally.

THE TRIAL

OF

JOHN AMBROSE WILLIAMS

FOR A LIBEL ON THE DURHAM CLERGY,

TRIED AT DURHAM,

On the 6th of August, 1822,

BEFORE BARON WOOD, AND A SPECIAL JURY.

Counsel for the Prosecution: Mr. *Scarlett* and Mr. *Tindal.*
For the Defendant: Mr. *Brougham* and Mr. *Alderson.*

THE written invective of the ancient orators is more fierce, intense, and terrible, more rapid and furious in its overwhelming energy and power, than the spoken vituperation of the moderns. The great Athenian models hurl the most deadly missiles that rhetoric can furnish, at each other; accumulate personal charges that should sink their antagonist to the earth, and stamp the tyrant and oppressor with a burning brand of infamy, with apostrophies of shame, taunting questions, and exclamations of horror, that must have stirred up to instant mutiny the voluble and easily-excited audience. Lysias, Æschines, and their master, 'that fulmin'd over Greece,' excel in virulent denunciation. His philippics, and the rival philippics of Tully, appear to 'pale all lesser fires.' The solemn crimination of Hastings by Burke, the recital of the atrocities he had sanctioned by Sheridan, even though screams and fainting attended the pathetic enumeration,—the charges against Napoleon by Macintosh, in his defence of Peltier—the devoting to divine vengeance the heads of perjured informers by Curran—the 'iron sleet of arrowy shower' with

which Brougham assailed the witnesses against Queen Caroline —these magnificent outbursts of rhetorical wrath scarcely kindle as intense a glow as those who first wielded the thunderbolt, the old classical masters of accusatory eloquence.

But the comparison rises greatly in favour of the moderns, when we learn that the most vehement of those effusions were never spoken, and that the rival orators of Athens assailed each other in the closet, and not on the *bema*. Plutarch doubts whether the vehement charge and countercharge, the magnificent De Coronâ, was ever spoken: certain it is, that of the five orations against Anthony, one only was uttered; that Milo would never have eaten figs at Marseilles, had Cicero pronounced the brilliant oration which he had composed, and had not faltered too much in the presence of armed bands to deliver it.

These cunning masters of fence appear to have made themselves proficients after the fashion of the student mentioned by Isaac Bickerstaffe, who practised the science of self-defence by pushing at the human figure he had chalked on the wall.

It certainly detracts from the intensity of our admiration for classical oratory, that the intemperate eloquence of language, the virulent declamation before which Catiline quailed, was not poured forth in the wrath and excitement of the moment, but was the cool, calm composition of the artful pleader, the balanced antithesis of the closet. These artificial orators knew not, as modern debaters, the rapture of instant conflict, the triumph of an immediate reply, the pressing to the utmost an advantage unexpectedly offered — the putting to rout an ingenious hypothesis, hazarded on the spot. Lycurgus, Isocrates, Scævola, could each launch apparently at the moment darts tipped with deadly venom; and, hearing the sudden twang of the bow, the spectator might suppose that the quiver had been hastily snatched up, — that the adversary was unguardedly wounded. But the effect, however striking, was pre-arranged; the ground had been measured, the vulnerable point cautiously considered and chosen, and each came prepared as a gladiator by previous rehearsal for the grip and throw, — the carte and tierce of oratory.

When Curran had commenced at midnight his pathetic appeal on behalf of some supposed traitor, and the military who filled the hall clashed their arms, or made them drop heavily on the pavement of the court, as if in defiance of his eloquence, how noble was the retort — "You may assassinate, but you cannot intimidate, me!" The classical reader is at once reminded of Tully's equally impassioned exclamation, — "Contempsi Catilinæ gladios, non pertimescam tuos;" but far inferior is the effect of the Roman orator, when we know that the magniloquent apostrophe was an afterthought, the interpellation of his revised speech — a glorious passage, which ought to have been, but never was, spoken. The electrical effect which Mr. Brougham produced in the House of Lords by his indignant exclamation, when the counsel for the Crown applied for the delay of a few weeks in the middle of the prosecution, — "And now I ask whether your lordships are a Court of Justice?" — the thrilling sensation occasioned by his sudden startling interrogatory, was aided by voice, look, and action, but due of special right to the fact of its being wholly unpremeditated.

We have selected for insertion the trial of Ambrose Williams, for a libel on the Durham clergy on account of the general interest of the topics discussed, and as affording the finest specimen extant of that forensic oratory which seeks rather to denounce than to persuade, and launches the thunderbolt of scorn, defiance, and vituperation. The saying is attributed to the eloquent advocate, that "he had never made a speech, either in Parliament or at the Bar, more entirely to his own satisfaction."

In the fierce war of pamphlets which had raged before, during, and subsequent to the Queen's trial, some of the beneficed clergy at Durham, Dr. Phillpotts in particular, had taken an active part. A newspaper published there, the "Durham Chronicle," under the patronage of Mr. Lambton, and fulmining forth his Whiggery, and something more, after many fierce and personal calumnies, gave utterance to the truculent libel on the clergy, and the Establishment in general, which elicited a criminal information. The ground-work for the article lay in the simple fact, that, when the news of the

decease of Queen Caroline arrived at Durham, on the 8th of August, 1821, the bells of the Cathedral and churches in the city were not tolled—a mark of becoming respect usually paid on the death of any member of the Royal Family.

On the 18th of August, whilst the feelings of indignation were yet fresh and keen for this supposed factious slight to the memory of the Queen, appeared a leading article in the Chronicle, denouncing the brutal enmity of the clergy, pursuing the most persecuted of women in her shroud, and prophesying that the spirit of the age would inevitably crush the fabric of the Church, with the beetles who crawled about amidst its holes and crevices. It required no spirit of divination to foresee that the Court of King's Bench would make absolute a rule for a criminal information for such railing abuse. We cannot repress our wonder at the firmness of the editor, Mr. Williams, who swore, in his affidavit against the rule, that "in publishing the said article or paragraph he referred solely to the conduct of the clergy of Durham, and not to that of the Church of England generally; and that in publishing the said article or paragraph he was not actuated in any the least degree by motives of malice or ill-will towards the clergy of the city of Durham, much less towards the clergy of any other part of the United Kingdom; and that such unworthy feelings are as alien to his known temper and character, as would be the voluntary and intended forbearance to exhibit suitable marks of sorrow on the decease of the Queen Consort of a King of England."

We have as little sympathy with the libeller personally, as with the motives for his vituperation. That Queen Caroline was ill-treated by her husband, and that his conduct from the first was most unbecoming a gentleman, there can be no doubt. But there is equally little room to question that she had, by her own misconduct, fallen from her high estate; and that if hers was a career of glory, she gloried in her shame. A Bill of Pains and Penalties had been read three times in the House of Lords; her name had been excluded from the Liturgy; she had not been permitted even to witness the coronation; and, though it would have been in better feeling had the customary tribute of mourning been paid, we must

not forget that she had stirred up the nation from its lowest depths to the very verge of rebellion; and the public mourning for her death by those who deprecated her seditious proceedings might have been attributed to insincerity. The clergy did not feel that her demise was a national calamity, and were silent. They did not lament it as a public or private affliction; and there was no muffled peal. They would have acted more prudently in not withholding this tribute to the consort of royalty, whose troubled career was closed, and with greater magnanimity,

"For England's vengeance wars not with the dead."

But for an act of omission like this, that eminent divines, Bishop Barrington and Dr. Phillpotts, should be described as reptiles and despicable hypocrites in a public newspaper, was too bad; a flagrant abuse of journalism. But, without feeling the slightest sympathy for his client's case, or profound indignation at the affront offered to the memory of the Queen, it is impossible not to pay a tribute of admiration to the vast intellectual ability of her mighty champion, Mr. Brougham. His speech in her defence is undoubtedly the noblest effort of modern oratory; and the harangue which he made at Durham against her clerical, dumb enemies, rivals the most terrible invectives of the theatrical gladiators of old.

With a tongue of fire he scattered invectives like hot burning coals on the heads of all who had dared to manifest open or covert hostility to the cause of the Queen. Bitter taunt, fierce scathing irony, glowing invective, rushed on as a torrent, mixed with cold and freezing sarcasm; the fire ran along the ground mingled with hail. But it was a torrent of living fire which consumed all before it, and with a perpetual vivid glow of apostrophe, exclamation, question, satire, indignation, and contempt, "flamed amazement." "If the reported speech thus moves you, how would you have been affected," said Æschines of his great rival, "if you could but have seen and heard him!"*

"Pride in his port, defiance in his eye," Mr. Brougham rivetted the jury with his kindling glance of passion: the

* Literally, the monster or wild beast, τί δὲ, εἰ ἀυτοῦ τοῦ θηρίου ακηκόειτε.

high sharp tones of indignant scorn, and occasional hissing whisper, attested more than a volume of sound could have done his deep emotion, and was audible, in its harsh intonation, to the remotest corner of the hushed court. The keen, sometimes shrill voice, concentrated look, and sweeping action, barbing and pointing the fiery words, might well call forth those enthusiastic bursts of applause which twice swept the court, in defiance of Baron Wood's threat of fine and imprisonment, the beseeching prayers for silence of the cryer and under-sheriff, and the impotent bustle of the javelin-men. The long-tried equanimity of the Judge, the practised placidity of the Divine, the smooth and affected indifference of the antagonist counsel, all gave way before the withering spells which the great necromancer scattered round him.

"In that charm'd circle none could walk but he."

He smote with point and edge; defied, struck down, trampled on his adversaries. According to the description of a shrewd critic*, "Dr. Phillpotts wore at first an air of *nonchalance*, and was often seen to smile; but as the personal allusions grew stronger and stronger, his equanimity was palpably disturbed. Sir James Scarlett also seemed to think indifference to the matter in hand becoming. The moment he had performed his own part, he took up a newspaper, and applied himself to its contents with the most laudable perseverance to the end of the defence. By a strange coincidence, indeed, whenever Mr. Brougham became particularly animated, Sir James seemed to discover something particularly interesting in his paper."

Highly successful as an effusion of party, the speech was framed with exquisite skill in its effect on the verdict. A mild tone of deprecation and apology would have been unsuited to the composition it defended, and would have probably been looked down upon as a confession of guilt extorted by fear. But the counsel's haughty challenge to the challenger, his justification of the imputed libel as an honest reprisal and well-deserved exposure, was far better adapted to the time and occasion, and had such an effect on the jury, that they could not agree on their verdict for five hours, not-

* Law Magazine, No. 2.

withstanding a most vehement charge from the presiding judge. They limited their verdict to a libel on the Durham clergy only, in such a manner as to prevent the prosecutors from entering up judgment. With the exception of paying his own costs, the defendant escaped scatheless.

In Michaelmas Term, 1821, Mr. Scarlett moved for a rule to show cause why a criminal information should not be granted against John Ambrose Williams for a libel. He read the libel, which certainly cries aloud and spares not.

"So far as we have been able to judge from the accounts in the public papers, a mark of respect to her late Majesty has been almost universally paid throughout the kingdom, when the painful tidings of her decease were received, by tolling the bells of the cathedrals and churches. But there is one exception to this very creditable fact which demands especial notice. In this episcopal city, containing six churches independently of the Cathedral, not a single bell announced the departure of the magnanimous spirit of the most injured of Queens—the most persecuted of women. Thus the brutal enmity of those who embittered her mortal existence pursues her in her shroud.

"We know not whether any actual orders were issued to prevent this customary sign of mourning; but the omission plainly indicates the kind of spirit which predominates among our clergy. Yet these men profess to be followers of Jesus Christ, to walk in his footsteps, to teach his precepts, to inculcate his spirit, to promote harmony, charity, and Christian love! Out upon such hypocrisy! It is such conduct which renders the very name of our established clergy odious till it stinks in the nostrils; that makes our churches look like deserted sepulchres, rather than temples of the living God; that raises up conventicles in every corner, and increases the brood of wild fanatics and enthusiasts; that causes our beneficed dignitaries to be regarded as usurpers of their possessions; that deprives them of all pastoral influence and respect; that, in short, has left them no support or prop in the attachment or veneration of the people. Sensible of the decline of their spiritual and moral influence, they cling to temporal power,

and lose, in their officiousness in political matters, even the semblance of the character of ministers of religion. It is impossible that such a system can last. It is at war with the spirit of the age, as well as with justice and reason, and the beetles that crawl about amidst its holes and crevices, act as if they were striving to provoke and accelerate the blow which sooner or later will inevitably crush the whole fabric and level it with the dust."

Mr. Scarlett was remarking that such observations could not be perused without a conviction that, if abuse of this kind was permitted, there must soon be an end to that veneration which ought to be paid to the established religion, when Lord Tenterden interposed,—"You may take a rule to show cause."

In the following term Mr. Brougham, in showing cause, took a preliminary objection that it was an anonymous prosecution—there should be a tangible prosecutor. "It is the most novel of all these recent novelties. I will defy any man to tell who the person is, or who the persons—who the corporation, corporate or sole, upon whose application this rule was obtained.

"If a prosecution may be thus instituted by a person unknown, or who, for any thing the Court can know, may have no existence, then may any person come forward as a prosecutor; any gentleman at the Bar, who chances to be unoccupied, may rise in his place and move: he will only have to say 'I call your lordships to put in motion the process of this Court; a libel has been published, and I call upon you to grant me this application.'"

The Lord Chief Justice drew a distinction between an application made on behalf of an individual, and a public body: and Mr. Brougham then objected that there was no affidavit denying the truth of the matters charged.

Mr. Justice Bayley made the just remark that the fact imputed here—the forbidding the bells to be tolled on the demise of a member of the Royal Family,—was not a charge of any crime; that the fact being not denied might be taken to be true; and yet the nature of the libel might justify this extraordinary mode of proceeding.

The defendant's counsel, thus driven from his preliminary technicalities, relied on more substantial objections: that the Durham clergy had been active political agents; had published pamphlets filled with aspersions against this very defendant, calling him a "hireling, and fulsome panegyrist;" and had, in various publications, reflected most virulently upon the individuals against whom they asked the Court to issue its process. They had called the Queen's own counsel brutal; and the Queen herself a sensual idol.

Mr. Scarlett in reply cited a case, that of Osborne, reported in 2 Barnardiston, 138, to which he would call the particular attention of the Court, as it was exactly parallel with that now before them. At the time of the discussions in Parliament relative to "the Jew Bill," that defendant published a libel charging the Portuguese Jews with having burned an illegitimate child. On a motion for an information, Lord Raymond at first thought, that as no one Jew was named, the Court could not interfere; but a rule *nisi* was granted, which on full consideration the Court made absolute, "because the whole body of Portuguese Jews were struck at." He only now requested for the Church of England that protection of which the Jews had been thought worthy.

The rule was immediately made absolute.

The criminal information came on for trial before Baron Wood, and a special jury, at the Durham Summer Assizes, 1822, on the 6th of August; and the court was crowded to excess with an audience anxious to hear a libel case, and anticipating that rich treat of oratory, in which they were assuredly not disappointed. Mr. Lambton, afterwards Lord Durham, sat by the side of his counsel, and Dr. Phillpotts on the bench.

Mr. Scarlett launched his case with that adroit skill which marked the science of the successful pleader, the modern Lysias, the Roscius of the bar. To conciliate the sympathies of the special jurors, he vouched the Court of King's Bench and the venerable Bishop Barrington as patrons of the prosecution. To raise their prejudices against the defendant, he sneered at the sectarian education of "the worthy gentleman,"

and his magnificent "we," that dignified name which peculiarly belongs to the press; slily alluded to his recovery of nominal damages for libel the day before against a brother editor, and called him "that unhappy man." His feelings as an old Whig seem in one respect to have over-mastered the judgment of the advocate. Sympathising, though languidly, with the cause of the popular Queen, who had not, however, called him to her councils, he was induced to soften and tone down the fact of the bells not tolling at her death, as if it had been a casual oversight, an accidental omission. The Jesuitical hint, at known variance with the fact, that, though the clergy were not so loud in their grief, they were perhaps the more sincere, (the peace-making *perhaps* could not excuse this glaring insincerity,) and the half-satirical innuendo, that whether the bells tolled or no was a matter of indifference, but, if it were inquired into, the fact no doubt was, that they had suppressed their emotions, — this unlucky sneer, the fruit of his political bias, gave an opening to Mr. Brougham for a furious onslaught, putting him and his clients to the rout. As he applied on another occasion with point but irreverence the saying of Cromwell, "The Lord had delivered them into his hand."

"Gentlemen of the Jury, I have the honour to be counsel on this information, which was filed by the direction of the Court of King's Bench. It was thought becoming the high station and eminent rank of the distinguished prelate who is connected with this county to stand forward in vindication of the character and defence of the interests of that body of which he is so distinguished a member, and therefore he is the promoter of this information, which charges the defendant with a design to bring into contempt the clergy of the Established Church in general, and the clergy of the Church of Durham in particular.

"Gentlemen, the defendant is the printer, and I believe the proprietor of a newspaper which has been some time published in this city, called the 'Durham Chronicle.' If I may judge from the contents of this libel, I should think he has probably imbibed, in his early education, some sectarian prejudices, and malice, or envy, towards the Established

Church which the management of a newspaper enabled him to gratify. But whether that is so or not, he was possessed of the opportunity of indulging in the propagation of such opinions and slander as I will undertake to say no Judge, and I trust no jury, will say are innocent. He has thought himself justified in laying hold of an occasion to give a successful blow to the established clergy of the Church of England, and therefore very ingeniously determined to take the advantage of that high and irritated state of public feeling which existed last year with respect to the proceedings taken against the unhappy and illustrious Queen Caroline, and which excited so much compassion and feeling, for the purpose of conveying his slander, that it might be the more easily diffused when the minds of the people were open to it. He has thought it expedient to charge the clergy of the Church of Durham in particular with 'brutal enmity' against that unhappy princess, and to rank them in the number of what he called her persecutors. It often happens, Gentlemen, that those who affect the greatest liberality are, in fact, the most intolerant; and this worthy gentleman furnishes an example of the truth of that remark. The greatest liberty ought to be allowed to individuals in expressing their own opinions, but they can have no right to libel those who hold opposite opinions. I know no reason why, because other men were not so clamorous in declaring their sentiments, the defendant should, on that account, indulge in remarks calculated to inflame the public mind against them. It may be very true that the clergy of England, and the clergy of Durham, in particular, were not so loud and clamorous in the expression of their feelings for the persecuted and injured Queen as the defendant was, but I think if he had bestowed any attention on the subject, he would have been bound in candour to admit, that in no address to the throne which emanated from the clergy, however loyal, and however disposed they might be to support the existing order of things, could he find any expression or sentiment of approbation of those proceedings. I know not what right the defendant had to think himself privileged to consider any men who did not step forward and exhibit the same open and manifest tokens

of attachment to the Queen as himself, as being less devoted to her interests, or to scandalise and attack them as entertaining animosity against her. Whether he was right or wrong in making that charge, the libel he has published can receive no justification. Gentlemen, you will find he takes an opportunity, when the minds of men were awakened, when public feeling was to a certain degree agitated by the recollection of the misfortunes and fate of that unhappy princess, to introduce this slander on the clergy, and assume, with the air of a prophet, to predict their fall. I will now state the particulars of the libel, and you will see whether the remarks I have made are not justified by the libel itself. On the 18th of August last, this paragraph appeared in the defendant's paper." Mr. Scarlett here read the first portion of the libel.

"Now, I beg to ask, Gentlemen, if the defendant had had any moderation or candour he would not have abstained, even in *his* particular view of the case, from drawing any inference from a fact of which he was not certain? He might have ascertained whether any person had required the bells to be tolled, and whether any order had been made that they should not be tolled. He might have had a perfect knowledge of the circumstance—a circumstance, by the way, trivial in its nature and of no sort of importance—but, in that happy state of ignorance, he gives loose to conjecture, and upon that case in which he confesses his ignorance, he makes these remarks. Gentlemen, allow me to say, that if he had expressed his concern in that proper sort of language which belongs to fair discussion, no individual of the Church would have thought it worth while to make any further comment upon it. Every man has a right to entertain his own opinions, and if he had known of any person who had requested the bells to be tolled, or any instance of any clergyman in this city, connected with the Cathedral, or otherwise, who had been backward in doing that for which he had been called upon, he might have remarked on such conduct, he might have imputed blame to it; but it is not justifiable, it is not to be endured, that a man should draw a false inference, and that he should thereupon libel a body of men, and attempt to bring them into disgrace and contempt,

because they were not so loud in their grief, being, perhaps, the more sincere, and because their bells were not tolled, but suppressed their emotions, on the death of the Queen. I appeal to any man who listens to the following part of the paragraph, whether the writer could have any other object than to slander, and bring into disgrace and contempt, the whole of the Established Church.

"'Yet these men profess to be followers of Jesus Christ, to walk in his footsteps, to teach his precepts, to inculcate his spirit, to promote harmony, charity, and Christian love! Out upon such hypocrisy!'

"There is the first charge; and I say that if to treat these persons as hypocrites in professing to be followers of our Saviour, to walk in his foosteps, to teach his precepts, to inculcate his spirit, to promote harmony, charity, and Christian love—I say that if to charge them with hypocrisy in their doing this to the eye and not to the heart, is not a libel, then no libel ever was written. But he did not rest there—his appetite was not there satiated. He goes a step further. He says—

"'It is such conduct which renders the very name of our established clergy odious till it stinks in the nostrils.'

"Who writes this? Is he a member of the Established Church? Is he aware that by the law and by the constitution of England that church is established, and that the body of her clergy must be protected? Does he know that her power must be shaken if the veneration and respect which belong to her were destroyed? Does he come from the kirk of Scotland, imbued with early prejudices against the established clergy of our Church? If it is true that the name of our established clergy is so odious, I agree with Mr. Williams that it is time they were put down and abolished; they cannot have any right to a permanent existence in this country, governed, as it is, by public opinion, if their name *is* so odious. If the gentleman is willing to avow, at once, that he is the advocate for putting down the Church of England, for destroying it, and putting an end to its existence, I shall understand why he has propagated opinions defaming the name of our established clergy. But if not, if

he still retains, or ever did possess, any veneration for our ancient establishments, and if he still wishes to preserve in purity that Church which is as pure as any that ever existed, how comes he to say that the very *name* of our clergy is odious?

"Gentlemen, you will find that he is not inconsistent, for after he has professed himself to be of opinion that the name of the clergy is so odious, he goes on to predict their fall.

"'That makes our churches look like deserted sepulchres, rather than temples of the living God.'

"I wonder if he frequents any of them, and has the fact of his own knowledge.

"'That raises up conventicles in every corner, and increases the brood of wild fanatics and enthusiasts; that causes our beneficed dignitaries to be regarded as usurpers of their possessions.'

"Usurpers of their possessions! Whose possessions are they which they are supposed to usurp? Does Mr. Williams mean to say that any considerable portion of the people regard our beneficed clergy as usurpers? I am sure my learned friend will disavow that sentiment for his client, because he knows the meaning of the word 'usurper' too well to draw upon himself that ridicule which would follow his attempt to defend it.

"'That deprives them of all pastoral influence and respect; that, in short, has left them no support or prop in the attachment or veneration of the people.'

"So, they have lost all pastoral influence and respect!

"'Sensible of the decline of their spiritual and moral influence, they cling to temporal power, and lose in their officiousness in political matters, even the semblance of the character of ministers of religion.'

"Now, I have observed that persons seldom object to any class of men taking part in politics, provided they take that part on their own side; and I submit to your consideration, whether, if the clergy had taken an active part in all that he did and wrote upon the subject of the Queen, they would have exposed themselves to the remarks of Mr. Williams. It is because they withdraw themselves from subjects of political feeling,—it is because they stand aloof, and think it

the more dignified to take no part in things affecting political feeling,—it is because they do not run into faction on this side or on that, that he charges them with officiousness.

"'It is at war with the spirit of the age, as well as with justice and reason, and the beetles who crawl about amidst its holes and crevices, act as if they were striving to provoke and accelerate the blow, which, sooner or later, will inevitably crush the whole fabric and level it with the dust.'

"If there are any among those who now hear me, who wish to see that event take place; if there are any who think the Church a nuisance, and who consider all religious establishments legal corruptions; if, I say, there are any of that opinion, I will allow them to entertain it, to discuss it calmly, and to endeavour to make proselytes, but not to take *these* means, not to think every weapon justifiable, not to do it by calumny, scandal, or slander. But if, on the other hand, there are no such persons, if the vast majority of the people are still attached to the forms and discipline of their own religion and church, *who* can endure that such a publication as this, calculated as it is to produce so much mischief in the minds of those who are apt to take not only their politics, but their religion too, from a newspaper, should go forth to the world with perfect impunity? But I think a different sentiment prevails. Let it be recollected that no nation in the world has arrived at the same degree of intellectual power, the same degree of glory, prosperity, and happiness, as this happy nation. Be it recollected, too, that the clergy of the Church of England have borne their part in raising us to that proud and elevated station; and if they are not forward upon every occasion, as Mr. Williams would wish, to take part in political questions, it is not because they do not feel like other men, but because their sacred duties require them to refrain from such interference. But they stand fast like a rock, and receive and repel the billows that would wash away the basis of the sacred edifice, as much opposed to tyranny on the one hand as to licentiousness on the other. Be it not forgotten, either, that to the stand made by the dignitaries of the Church we owe the possession of that liberty which has been carried to the highest pitch a nation

could ever boast of. If this gentleman would condescend not to libel, slander, and reflect upon the whole body of the clergy with the view of bringing them into hatred and contempt, but show that any other establishment possesses greater advantages, I will enter the lists with him, and produce from the clergy of our established church, examples of learning, piety, charity, integrity, and virtue, not to be excelled, or even to be equalled by the whole of the world beside. But when, in despite of fair argument, he thinks fit to commence his rude attack upon this ancient and glorious fabric, it is impossible to argue with such a man. But the question is, whether such a libeller shall be tolerated whether such a man shall with impunity attempt to wean the people of England from their attachment to their ancient and sacred institutions? I cannot imagine that any one person of liberal feeling can entertain any opinion but that this is a libel.

"Gentlemen, I own I know not in what manner my learned friend, Mr. Brougham, will meet this case. That he will treat it with a degree both of eloquence and ability not to be surpassed I full well know; but of all the efforts of his mighty genius, I know of none in which he will have so desperate a struggle to make. He will give me no opportunity of replying—he will not indulge the virulence or malice of his client, or lend himself to his insane views, by calling witnesses. I hope, therefore, my learned friend will forgive me if I anticipate what he will say. First, will he say that this is not a libel? Will he join a direct issue and make a distinct appeal as to whether it is, or is not, a libel? If my learned friend shall convince you that no reproach, or calumny, is cast upon the Church,—if he shall satisfy you that it is no libel to say that the name of the clergy is odious, that stigmatising the clergy as hypocrites is not undermining the foundations of the Church—if he shall convince you of that, he will succeed in that part of the question; but I shall be very much surprised if my learned friend can suggest any thing calculated to produce such an impression on your minds. But will my learned friend say his client is right, and that the clergy are all that he has described them to be? I think

my learned friend has too much good sense, too much judgment and discretion, to profess, in *this* place, that which I am sure he does not feel in *any* place, hostility to the established church of the country. No doubt my learned friend may find, in many learned works, arguments to impeach the established forms of worship; but I know well, that in a Court of British Judicature he will not venture to say that this is the place, or that a newspaper is the vehicle, in which imputations upon the Church of England are to be cast with a view of destroying the Establishment. I know he will take no such course. What, then, *will* he say? Will he say that his client erred from honest intention, that he mistook his object, that in the excess of his zeal he had overstepped the path of prudence, and, in the modesty of his nature, had been led into scandalous expressions which he could not justify? If he says that, he gives me the verdict. Or if he shows that he has never repeated the charge, that he has recanted, or that he has apologised—all that would go in palliation of the offence; but still it would only be an argument for mitigation of punishment, and would not entitle him to a verdict of acquittal. Perhaps my learned friend will take another course, and he may think, when he looks upon a jury of a county in which the clergy are often brought into political contact with the landed proprietors, he may find some way of producing a prejudice in favour of his client. Upon that subject I feel secure, because I cannot pay so poor a compliment to this county as to suppose any men in it would bring political subjects into a jury-box, and give their verdict, not from the evidence, but from their feelings. I am perfectly satisfied the county of Durham will not correspond with such expectations, however highly it may revere the talents of my learned friend, Mr. Brougham. I myself am one of those unhappy persons in England called Whigs; but I own I should be exceedingly sorry to have it considered that the Whigs are disposed to undermine the Church of England, and not as ready to lend themselves to support the character of that Church, its influence and authority, as any men. It would be a sad lesson indeed to read in the

present state of parties in this country. I own it would not affect my hopes, for I entertain none; but it would affect my feelings, if I could bring myself to think that the people of England could be persuaded by the verdict of any jury, that the party to which I am attached had any desire to undermine and overturn the Established Church. To return to the point at which I first set out, how is my learned friend to treat this case? I think it is a desperate case. I see no defence he can have. No construction, no ingenuity, can distort the natural sense of the words; and I see nothing by which any man can avoid coming to the conclusion that the author has libelled the Church of England, and the church of Durham in particular; but it may be a consolation to believe that, in predicting its fall, 'his wish was father to the thought.' These are my feelings, and I profess no other anxiety than that justice shall be done, and that the law shall have its course. Far, far be it from me, and from him whom I represent, to have any unchristian or uncharitable feeling or enmity towards the unhappy man who is the author of this libel. It is one thing, Gentlemen, to feel a wound upon a body of men, and another to entertain personal enmity to him who gave it. Believe me, no such feeling is harboured by any individual concerned in this prosecution. Mr. Williams is the master of his own conduct in this affair, and let him be judged by that conduct. If my learned friend should say that one cannot libel a body of men, that no individual is attacked, and that the body is large enough to bear it; to that I answer that a libel which reflects disgrace on a body of men is a more fit subject for prosecution than any other, because an *individual* might bring his civil action (and, surely, Mr. Williams cannot complain of unfairness, when his own feelings are so delicate and tender that he cannot suffer even a rival newspaper to cast a reflection upon his character without bringing him before a court of justice); but where a libel is on a whole body of men, and they cannot by action bring it into court, the only remedy is a prosecution at the suit of the Crown. Therefore, of all cases of prosecution for libel, this is the most justifiable. Allow me, Gentle-

men, to claim, on behalf of the Church, that protection which has been given to other public bodies. It is not long since a measure was brought into Parliament to secure particular privileges to the Jews; when somebody thought fit to indulge in a calumny on the whole body of the Jews, and the Court of King's Bench granted an information against that individual, upon which he was convicted. In like manner, the East India Company was libelled, and an information was granted, which was also followed by a conviction. The same of juries; they have been libelled; and what if Mr. Williams were to oppose a verdict as contrary to the law and to the evidence, and to say that all juries were corrupt, that the institution was falling into dust,—would that libel be tolerated? Or if he were to attack the judges and take advantage of the public feeling, which might go along with him? The judges are but men, and may sometimes do wrong; but would it be justifiable for him to attack them by a system of calumny, if a decision should not suit his fancy? I ask, if he were to say that all judgments were corrupt, and every succeeding judgment they gave was hastening their downfall, would any judge, or any jury, hesitate to say that he was guilty of a libel? Take it to yourselves; and if your verdict were to subject you to such an imputation, the same justice that you would seek, I ask for the Established Clergy. I only ask you to feel the same for the Established Clergy of the Church of England. They ask no privilege that does not belong to any other set of men, and have no desire to separate themselves from the laity. Because some individuals may have departed from the paths of truth and rectitude, surely it is not just to cast imputations on the whole body. I would ask you, Gentlemen, at this moment, if even you entertained opinions hostile to the Church of England, to do that same justice to the clergy, you would wish to be done to yourselves. If any one establishment, doubtful in policy, but upheld by the law, were attacked, I would ask the same protection for it as I would for the Established Church; and if, in that case, you would say you were bound by your oaths, and your duty to your country, to find guilty the man who had libelled that es-

tablishment, I ask only the same protection for the Church of England,—that her clergy may not be exposed to the rude attacks of every newspaper writer who may think they ought to be pulled down from their seats, and that the whole establishment should be trampled on and destroyed.

"I am sure my learned friend will appeal to you on the liberty of the press; and no one will hear his observations with greater pleasure, or join more heartily in the preservation of that liberty, than myself. But let it not be said that *this* is the liberty of the press. There are two things sometimes confounded together. There is the liberty, but there is also the tyranny of the press; and I think the best mode of preserving its liberty is to prevent its growing into a tyrant, by attacking right and left—by attacking every body of men, causing one general mass of confusion, and bringing all our establishments into hatred and contempt. Many learned and good men have conveyed their sentiments on the Established Church to the world; but if Mr. Williams takes a newspaper and calumniates a body of men who have not the same means of defence, it becomes your sacred duty, when such a man is brought into a Court of Justice, to deal with him according to law, which is the foundation of all our rights and all our blessings, and which is borrowed from the eternal laws of the dispensations of Providence, which may not be violated in any particular instance by favour or partiality to any man, but which shall have their full force and efficacy in each particular case. Let that law be observed, and equal justice done between man and man, so that no one may go from this Court with the notion that he may attack the Church with impunity, call the clergy hypocrites, and say that to declare their very name stinks in the nostrils is no crime, for that the verdict of a jury of the county of Durham warranted the charge. Let not the idea go forth that such calumnies shall go unpunished, and that such opinions are free; or we may shortly see the defendant's prediction fulfilled; for then might the mob be inflamed to pull down the edifices consecrated to the services of our religion; and all this might be done with impunity, if Mr. Williams is justified by your verdict this day. But I know you will not justify him. I feel and know

better whom I address. I know none of you personally; but if I knew you all, and knew your political sentiments to be hostile to the clergy, I should feel equally as secure and content as if your sentiments were directly opposite.

"Gentlemen, I beg pardon for detaining you so long; but I knew I should have no other opportunity of addressing you. You will hear the speech of my learned friend, and witness a blaze of eloquence not to be surpassed. But when you have heard that, come back to the just consideration of the subject. Look to the libel, Gentlemen, and say whether the man who wrote it had no intention of calumniating the clergy of the Church of England, and of Durham particularly; and if you can say it has no tendency to depreciate them in public estimation, then, and then only, can you be justified in finding him not guilty."

In the cross-examination of the first witness, who proved the publication of the libel, contrasting the emotion which the bells displayed (he might thank his friend for teaching him that word) on occasion of the coronation and of the Queen's death, Mr. Brougham with eager alacrity rushed upon his rival's blunder, and opened a masked battery on his opponents.

Did you reside in Durham in August last?—Yes; I have resided in Durham all my life.

Do you recollect hearing of the death of her late Majesty?—I do.

Then you recollect the day on which the melancholy intelligence arrived in Durham?—I do.

I presume you heard the bells of the Cathedral and other churches toll in the usual way?—No, Sir; I cannot say that I did.

Why, you are not deaf?—No.

Do you believe they were tolled or not?—I believe they were not.

Do you recollect the coronation of His Majesty, a short time before the melancholy occasion of which we have been speaking?—Yes.

Did the bells keep it all to themselves on that day?—No, Sir.

Did they ring?—Yes; all the bells rung upon that day.

What! the Cathedral and all?—Yes, Sir; all the bells in the town.

They rung many a merry peal? Yes, Sir.

From the biggest to the least church? Yes, Sir.

They did not "suppress their emotions" on that occasion? —No.

Do you recollect the death of his late Majesty?—Yes.

What part did the bells take then the hypocritical, or the frank part?—I cannot recollect, but I think they tolled.

Do you recollect the death of the late Queen Charlotte? —Yes, Sir, I do.

What part did the bells take then?—They tolled.

The usual proof of defendant being the proprietor of the paper in which the libel appeared, by the production of an affidavit from the Stamp-Office, was then given, and the libel put in and read.

Mr. Brougham rose; and, at the very onset, turned the weapon's point which was meant to pierce himself, and wounded his antagonist.

"My learned friend, the Attorney-General for the Bishop of Durham, having, at considerable length, offered to you various conjectures as to the line of defence which he supposed I should pursue upon this occasion; having nearly exhausted every topic which I was *not* very likely to urge, and elaborately traced, with much fancy, all the ground on which I could hardly be expected to tread—perhaps it may be as well that *I* should now, in my turn, take the liberty of stating to you what really *is* the defendant's case, and that you should know from myself what I *do* intend to lay before you. As my learned friend has indulged in so many remarks upon what I shall not say, I may take leave to offer a single observation on what he has said; and I think I may appeal to any one of you who ever served upon a jury, or witnessed a trial, and ask if you ever, before this day, saw a public prosecutor who stated his case with so much art and ingenuity, wrought up his argument with such pains, wandered into so large a field of declamation, or altogether performed his task in so elaborate and eloquent a

fashion as the Attorney-General has upon the present occasion. I do not blame this course. I venture not even to criticise the discretion he has exercised in the management of his cause; and I am far indeed from complaining of it. But I call upon you to declare that inference which I think you must have already drawn in your minds, and come to that conclusion at which I certainly have arrived — that he felt what a labouring case he had — that he was aware how very different his situation to-day is from any he ever before knew in a prosecution for libel — and that the extraordinary pressure of the difficulties he had to struggle with, drove him to so unusual a course. He has called the defendant '*that unhappy man.*' Unhappy he will be indeed, but not the only unhappy man in this country if the doctrines laid down by my learned friend are sanctioned by your verdict; for those doctrines, I fearlessly tell you, must, if established, inevitably destroy the whole liberties of us all. Not that he has ventured to deny the right of discussion generally upon all subjects, even upon the present, or to screen from free inquiry the foundations of the Established Church and the conduct of its ministers as a body (which I shall satisfy you are not even commented on in the publication before you). Far from my learned friend is it to impugn those rights in the abstract; nor indeed have I ever yet heard a prosecutor for libel — an Attorney-General (and I have seen a good many in my time), whether of our Lord the King or our Lord of Durham, who, while in the act of crushing every thing like unfettered discussion, did not preface his address to the jury with 'God forbid that the fullest inquiry should not be allowed;' but then the admission had invariably a condition following close behind, which entirely retracted the concession — 'provided always the discussion be carried on harmlessly, temperately, calmly' — that is to say, in such a manner as to leave the subject untouched, and the reader unmoved; to satisfy the public prosecutor, and to please the persons attacked."

Armed, and ready for battle, the champion for full freedom of speech would take up the gauntlet which Mr. Scarlett had thrown down, and assert his client's knowledge that the

Church was established by law, open to investigation, as all other establishments, and especially open to inquiry as the creature and offspring of inquisitive, searching, and fearless discussion.

"My learned friend has asked if the defendant knows that the Church is established by law? He knows it, and so do I. The Church is established by law, as the civil government—as all the institutions of the country are established by law—as all the offices under the Crown are established by law, and all who fill them are by that law protected. It is not more established, nor more protected, than those institutions, officers, and office-bearers, each of which is recognised and favoured by the law as much as the Church; but I never yet have heard, and I trust I never shall; least of all do I expect, in the lesson which your verdict this day will read, to hear, that those officers and office-bearers, and all those institutions, sacred and secular, and the conduct of all, whether laymen or priests, who administer them, are not the fair subjects of open, untrammelled, manly, zealous, and even vehement discussion as long as this country pretends to liberty, and prides herself on the possession of a free press.

"In the publication before you, the defendant has not attempted to dispute the high character of the Church; on that establishment or its members, generally, he has not endeavoured to fix any stigma. Those topics, then, are foreign to the present inquiry, and I have no interest in discussing them; yet, after what has fallen from my learned friend, it is fitting that I should claim for this defendant, and for all others, the right to question, freely to question, not only the conduct of the ministers of the Established Church, but even the foundations of the Church itself. It is, indeed, unnecessary for my present purpose, because I shall demonstrate that the paper before you does not touch upon those points; but unnecessary though it be, as my learned friend has defied me, I will follow him to the field, and say, that if there is any one of the institutions of the country which, more emphatically than all the rest, justifies us in arguing strongly, feeling powerfully, and

expressing our sentiments with vehemence, it is that branch of the State which, because it is sacred, because it bears connection with higher principles than any involved in the mere management of worldly concerns, for that very reason entwines itself with deeper feelings, and must needs be discussed, if discussed at all, with more warmth and zeal than any other part of our system is fitted to rouse. But if any hierarchy in all the world is bound, on every principle of consistency—if any church should be forward not only to suffer but provoke discussion, to stand upon that title and challenge the most unreserved inquiry, it is the Protestant Church of England; first, because she has nothing to dread from it; secondly, because she is the very creature of free inquiry, the offspring of repeated revolutions, and the most reformed of the reformed churches of Europe. But surely if there is any one corner of Protestant Europe where men ought not to be rigorously judged in ecclesiastical controversy, where a large allowance should be made for the conflict of irreconcileable opinions, where the harshness of jarring tenets should be patiently borne; and strong, or even violent language, be not too narrowly watched—it is this very realm, in which we live under three different ecclesiastical orders, and owe allegiance to a sovereign, who, in one of his kingdoms, is the head of the Church, acknowledged as such by all men; while, in another, neither he, nor any earthly being, is allowed to assume that name—a realm composed of three great divisions, in one of which prelacy is favoured by law and approved in practice by an episcopalian people; while, in another, it is protected indeed, by law, but abjured in practice by a nation of sectaries, Catholic and Presbyterian; and, in a third, it is abhorred alike by law and in practice, repudiated by the whole institutions, scorned and detested by the whole inhabitants."

The allusion of the speaker to a remarkable incident then occurring (the King's visit to Scotland), seems singularly apposite and felicitous, and his ironical sarcasms when comparing the splendours of the one church with the parsimony of the other, 'burn and tingle like sharp points of frozen lead.'

"His Majesty, almost at the time in which I am speaking,

is about to make a progress through the Northern provinces of this island, accompanied by certain of his chosen counsellors, a portion of men who enjoy, unenvied, and in an equal degree, the admiration of other countries and the wonder of their own—and there the prince will see much loyalty, great learning, some splendour, the remains of an ancient monarchy, and of the institutions which made it flourish. But one thing he will not see. Strange as it may seem, and to many who hear me incredible, from one end of the country to the other he will see no such thing as a bishop [*Loud laughter*]; not such a thing is to be found from the Tweed to John o' Groat's: not a mitre; no, nor so much as a minor canon, or even a rural dean—and in all the land not one single curate! So entirely rude and barbarous are they in Scotland in such outer darkness do they sit, that they support no cathedrals, maintain no pluralists, suffer no non-residence; nay, the poor benighted creatures are ignorant even of tithes. Not a sheaf, or a lamb, or a pig, or the value of a plough-penny, do the hapless mortals render from year's end to year's end! Piteous as their lot is, what makes it infinitely more touching is, to witness the return of good for evil in the demeanour of this wretched race. Under all this cruel neglect of their spiritual concerns, they are actually the most loyal, contented, moral, and religious people any where, perhaps, to be found in the world. Let us hope (many indeed there are, not afar off, who will with unfeigned devotion pray) that His Majesty may return safe from the dangers of his excursion into such a country; an excursion most perilous to a certain portion of the Church, should his royal mind be infected with a taste for cheap establishments, a working clergy, and a pious congregation!"

In the fruits of the system, rearing sound, learned, and eloquent divines, the Church of England need not fear comparison with her poorer sister; but the scoffing orator was in the vein, and thus derides the rich Establishment.

"Habes pretium, loris non ureris aio."

"But compassion for our brethren in the North has drawn me aside from my purpose, which was merely to remind you

how preposterous it is, in a country of which the ecclesiastical polity is framed upon plans so discordant, and the religious tenets themselves are so various, to require any very measured expression of men's opinions upon questions of Church government. And if there is any part of England, in which an ample licence ought more especially to be admitted in handling such matters, I say, without hesitation, it is this very bishopric, where, in the nineteenth century, you live under a Palatine Prince, the Lord of Durham; where the endowment of the hierarchy, I may not call it enormous, but I trust I shall be permitted, without offence, to term splendid; where the Establishment, I dare not whisper proves grinding to the people, but I will rather say, is an incalculable, an inscrutable blessing—only it *is* prodigiously large; showered down in a profusion somewhat overpowering; and laying the inhabitants under a load of obligation overwhelming by its weight—it is in Durham, where the Church is endowed with a splendour and a power, unknown in monkish times and Popish countries, and the clergy swarm in every corner, an' it were the patrimony of Saint Peter—it is here, where all manner of conflicts are at each moment inevitable between the people and the priests, that I feel myself warranted on *their* behalf, and for *their* protection—for the sake of the Establishment, and as the discreet advocate of that Church and that clergy,—for the defence of their very existence—to demand the most unrestrained discussion of their title and their actings under it. For them, in this age, to screen their conduct from investigation is to stand self-convicted; to shrink from the discussion of their title is to confess a flaw. He must be the most shallow, the most blind of mortals, who does not at once perceive, that if that title is protected only by the strong arm of the law, it becomes not worth the parchment on which it is engrossed, or the wax that dangles to it for a seal. I have hitherto all along assumed that there is nothing impure in the practice under the system; I am admitting that every person engaged in its administration does every one act which he ought, and which the law expects him to do; I am supposing that, up to this hour, not one unworthy member has entered within its pale; I am even

presuming that up to this moment not one of those individuals has stepped beyond the strict line of his sacred functions, or given the slightest offence or annoyance to any human being; I am taking it for granted that they all act the part of good shepherds, making the welfare of their flock their first care—and only occasionally bethinking them of shearing in order to prevent the too luxuriant growth of the fleece proving an incumbrance, or to eradicate disease. If, however, those operations be so constant that the flock actually live under the knife—if the shepherds are so numerous, and employ so large a troop of the watchful and eager animals that attend them (some of them with a cross of the fox, or even the wolf, in their breed)—can it be wondered at, if the poor creatures, thus fleeced and hunted, and barked at, and snapped at, and from time to time worried, should now and then bleat, dream of preferring the rot to the shears, and draw invidious, possibly disadvantageous, comparisons between the wolf without and the shepherd within the fold? It cannot be helped—it is in the nature of things that suffering should beget complaint; but for those who have caused the pain to complain of the outcry and seek to punish it—for those who have goaded to scourge and to gag, is the meanest of all injustice. It is, moreover, the most pitiful folly for the clergy to think of retaining their power, privileges, and enormous wealth, without allowing free vent for complaints against abuses in the Establishment and delinquency in its members; and in this prosecution they have displayed that folly in its supreme degree. I will even put it that there has been an attack on the hierachy itself—I do so for argument's sake only; denying all the while, that anything like such an attack is to be found within the four corners of this publication. But suppose it had been otherwise,—I will show you the sort of language in which the wisest and the best of our countrymen have spoken of that establishment."

Following the example of Erskine in his defence of Paine, Mr. Brougham then read passages from Milton, Burnet, Dr. Hartley, and Dr. Simpson, in which these bold and independent writers used the strongest and most opprobrious language, when speaking of the abuses in the Church, and

inveighing against intemperate priests, avaricious clerks, and lukewarm formalists.

"Can it be a matter of wonder that laymen should sometimes raise their voices tuned to the discords of the sacred choir; and are they to be punished for what secures to clerical followers veneration and—preferment? But I deny that Mr. Williams is of the number of followers; I deny that he has taken a leaf or a line out of such books; but I do contend that if the real friends of the Church, if its own members, can safely indulge in such language, it is ten thousand times more lawful for a layman, like the defendant, to make the harmless observations which he has published, and in which I defy any man to show me one expression hostile to our ecclesiastical establishment."

Mr. Brougham then read the passage of the libel concluding "Out upon such hypocrisy!" and poured forth the following magnificent invective, which must have been in a great measure extemporaneous, as the counsel for the prosecution had only afforded an opportunity for the crushing rejoinder, by his futile pretext, half an hour before.

"That you may understand the meaning of this passage, it is necessary for me to set before you the picture my learned friend was pleased to draw of the clergy of the diocese of Durham; and I shall recall it to your minds almost in his own words. According to him, they stand in a peculiarly unfortunate situation; they are, in truth, the most injured of men. They all, it seems, entertained the same generous sentiments with the rest of their countrymen, though they did not express them in the old, free, English manner, by openly condemning the proceedings against the late Queen; and after the course of unexampled injustice, against which she victoriously struggled, had been followed by the needless infliction of inhuman torture, to undermine a frame whose spirit no open hostility could daunt, and extinguish the life so long embittered by the same foul arts—after that great princess had ceased to harass her enemies (if I may be allowed thus to speak, applying, as they did, by the perversion of all language, those names to the victim which belong to the tormentor)—after her glorious but unhappy life had

closed, and that princely head was at last laid low by death, which, living, all oppression had only the more illustriously exalted—the venerable clergy of Durham, I am now told for the first time, though less forward in giving vent to their feelings than the rest of their fellow-citizens though not so vehement in their indignation at the matchless and unmanly persecution of the Queen,—though not so unbridled in their joy at her immortal triumph, nor so loud in their lamentations over her mournful and untimely end did, nevertheless, in reality, all the while deeply sympathise with her sufferings, in the bottom of their reverend hearts! When all the resources of the most ingenious cruelty hurried her to a fate without parallel—if not so clamorous, they did not feel the least of all the members of the community—their grief was, in truth, too deep for utterance—sorrow clung round their bosoms, weighed upon their tongues, stifled every sound—and, when all the rest of mankind, of all sects and of all nations, freely gave vent to the feelings of our common nature, THEIR silence, the contrast which THEY displayed to the rest of their species, proceeded from the greater depth of their affliction; they said the less because they felt the more! Oh! talk of hypocrisy after this! Most consummate of all hypocrites! After instructing your chosen, official, advocate to stand forward with such a defence—such an exposition of your motives—to dare utter the word hypocrisy, and complain of those who charged you with it! This is indeed to insult common sense, and outrage the feelings of the whole human race! If you were hypocrites before, you were downright, frank, honest hypocrites to what you have now made yourselves—and surely, for all you have ever done, or ever been charged with, your worst enemies must be satiated with the humiliation of this day, its just atonement, and ample retribution!"

[On the delivery, says the published report, of this passage, which was given in a tone and voice which literally shook every man in his seat, the most tumultuous applause prevailed, and which could not be silenced for some time. The Judge told the officers to point out any of the persons who caused this interruption, and he would commit them.]

"If Mr. Williams had known the hundredth part of this at the time of Her Majesty's demise; if he had descried the least twinkling of the light which has now broke upon us, as to the real motives of their actions, I am sure this cause would never have been tried; because to have made any one of his strictures upon their conduct, would have been not only an act of the blackest injustice; it would have been perfectly senseless. But can he be blamed for his ignorance when such pains were taken to keep him in the dark? Can it be wondered at that he was led astray, when he had only so false a guide to their motives as their conduct, unexplained, afforded? When they were so anxious to mislead, by facts and deeds, is his mistake to be so severely criticised? Had he known the real truth, he must have fraternised with them; embraced them cordially; looked up with admiration to their superior sensibility; admitted that he who feels most, by an eternal law of our nature, is least disposed to express his feelings; and lamented that his own zeal was less glowing than theirs: but, ignorant and misguided as he was, it is no great marvel that he did not rightly know the real history of their conduct, until about three quarters of an hour ago, when the truth burst in upon us, that all the while they were generously attached to the cause of weakness and misfortune."

Under the saving virtue of an "if," Mr. Brougham went on to heap opprobrium on the heads of the clergy; kindling with the applausive assent of the majority of his audience, and applying the scourge the more vigorously as he grew heated with his task. The rod of the orator became a serpent, and devoured the rods of the rival magician. Glancing obliquely at the clergy in general, when protesting against any invidious interpretation, the mighty orator plied his shafts, and wounded retreating *versisque sagittis.*

"Gentlemen, if the country, as well as Mr. Williams, has been all along so deceived, it must be admitted that it is not from the probabilities of the case. Judging beforehand, no doubt, any one must have expected the Durham clergy, of all men, to feel exactly as they are now, for the first time, ascertained to have felt. They are Christians; outwardly at least, they profess the gospel of charity and peace; they

beheld oppression in its foulest shape; malignity and all uncharitableness putting on their most hideous forms; measures pursued to gratify prejudices in a particular quarter, in defiance of the wishes of the people, and the declared opinions of the soundest judges of each party; and all with the certain tendency to plunge the nation in civil discord. If for a moment they had been led away, by a dislike of cruelty and of civil war, to express displeasure at such perilous doings, no man would have charged them with political meddling; and when they beheld truth and innocence triumph over power, they might, as Christian ministers, calling to mind the original of their own church, have indulged without offence in some little appearance of gladness; a calm, placid satisfaction, on so happy an event, would not have been unbecoming their sacred station. When they found that her sufferings were to have no end; that new pains were inflicted in revenge for her escape from destruction, and new tortures devised to exhaust the vital powers of her whom open, lawless violence had failed to subdue we might have expected some slight manifestation of disapproval from holy men who, professing to inculcate loving-kindness, tender mercy, and good-will to all, offer up their daily prayers for those who are desolate and oppressed. When at last the scene closed, and there was an end of that persecution which death alone could stay; but when not even her unhappy fate could glut the revenge of her enemies; and they who had harassed her to death now exhausted their malice in reviling the memory of their victim; if among them had been found, during her life, some miscreant in the garb of a priest, who, to pay his court to power, had joined in trampling upon the defenceless; even such a one, bare he the form of a man, with a man's heart throbbing in his bosom, might have felt even *his* fawning, sordid, calculating malignity assuaged by the hand of death; even *he* might have left the tomb to close upon the sufferings of his victim. All probability certainly favoured the supposition that the clergy of Durham would not take part against the injured, because the oppressor was powerful; and that the prospect of emolument would not make them witness, with dry eyes and hardened hearts, the

close of a life which they had contributed to embitter and destroy. But I am compelled to say that their whole conduct has falsified those expectations. They sided openly, strenuously, forwardly, officiously with power, in the oppression of a woman, whose wrongs this day they for the first time pretend to bewail in their attempt to cozen you out of a verdict, behind which they may skulk from the inquiring eyes of the people. Silent, and subdued in their tone as they were, on the demise of the unhappy Queen, they could make every bell in all their chimes peal, when gain was to be expected by flattering present greatness. Then they could send up addresses, flock to public meetings, and fill the press with their libels, and make the pulpit ring with their sycophancy, filling up to the brim the measure of their adulation to the reigning monarch, head of the Church and dispenser of its patronage!

"In this contrast originated the defendant's feelings; and hence the strictures which form the subject of these proceedings. I say the publication refers exclusively to the clergy of this city and its suburbs, and especially to such parts of that clergy as were concerned in the act of disrespect towards her late Majesty, which forms the subject of the alleged libel; but I deny that it has any reference whatever to the rest of the clergy, or evinces any designs hostile either to the stability of the Church, or the general character and conduct of its ministers. My learned friend has said that Mr. Williams had probably been bred a sectary, and retained sectarian prejudices. No argument is necessary to refute this supposition. The passage which has been read to you carries with it the conviction that he is no sectary, and entertains no schismatical views against the Church; for there is a more severe attack upon the sectaries themselves, than upon the clergy of Durham. No man can have the least hesitation in saying, the sentiments breathed in it are any thing but those of a sectary. For myself, I am far from approving the contemptuous terms in which he has expressed himself of those who dissent from the Establishment; and I think he has not spoken of them in the tone of decent respect that should be observed to so many worthy persons, who,

though they differ from the Church, differ from it on the most conscientious grounds. This is the only part of the publication of which I cannot entirely approve; but it is not for this he is prosecuted. Then, what is the meaning of the obnoxious remarks? Are they directed against the Establishment? Are they meant to shake or degrade it? I say that no man who reads them can entertain a moment's doubt in his mind, that they were excited by the conduct of certain individuals; and the use which he makes of that particular conduct, the inference which he draws from it, is not invective against the Establishment, but a regret that it should by such conduct be lowered. He traces, not with exultation, but with sorrow, the cause of the desertion of the Church, and the increase of conventicles. He holds up to the clergy that mirror in which they may see their own individual misconduct, and calculate its inevitable effects upon the security and honour of the Establishment which they disgrace. This is no lawyer-like gloss upon the passage — no special pleading construction, or far-fetched refinement of explanation, — I give the plain and obvious sense which every man of ordinary understanding must affix to it. If you say that such an one disgraces his profession, or that he is a scandal to the cloth he wears, (a common form of speech, and one never more in men's mouths than within the last fortnight, when things have happened to extort an universal expression of pain, sorrow, and shame*,) do you mean by such lamentations to undermine the Establishment? In saying that the purity of the cloth is defiled by individual misconduct, it is clear that you cast no imputation on the cloth generally. If he had thought that the whole Establishment was bad; that all its ministers were time-servers, who, like the spaniel, would crouch and lick the hand that fed it, but snarl and bite at one which had nothing to bestow — fawning upon rich and liberal patrons, and slandering all that were too proud or too poor to bribe them — if he had painted the Church as founded upon imposture, reared in time-serving, cemented by sordid interest, and crowned with spite, and insolence and pride, — to have said that the Durham clergy disgraced such a hierarchy

* The orator alludes to the wretched exposure of an Irish prelate.

would have been not only gross inconsistency, but stark nonsense. He must rather have said that they were worthy members of a base and grovelling Establishment; that the church was as bad as its ministers; and that it was hard to say whether they more fouled it or were defiled by it. But he has said nothing which can bring into jeopardy or discredit an institution which every one wishes to keep pure, and which has nothing to apprehend so much as the follies and crimes of its supporters.

"Gentlemen, you have to-day a great task committed to your hands. This is not the age, the spirit of the times is not such, as to make it safe either for the country, or for the government, or for the Church itself, to veil its mysteries in secrecy: to plant in the porch of the temple a prosecutor brandishing his flaming sword, *the process of the law*, to prevent the prying eyes of mankind from wandering over the structure."

The metaphor would have been striking and complete, but for the injudicious introduction of the words in Italics, "the process of the law," which lowers and defaces the text like the stupid gloss of some prosaic commentator on a glowing passage in the Iliad or in Shakspeare.

The close of this noble oration, though somewhat too bitter and defiant, must have stunned the prosecutors, and awed the jury into submission. The discursive and fitful splendour of the whole speech may remind the classical reader of those beacon fires of Greece which flashed from Mount Ida to Argos, bounded along craig and steep to Lemnos, and flung their burning shadow on the waters of the Euripus.

"These are times when men *will* inquire, and the day most fatal to the Established Church, the blackest that ever dawned upon its ministers, will be that which consigns this defendant, for these remarks, to the horrors of a gaol, which its false friends, the chosen objects of such lavish favour, have far more richly deserved. I agree with my learned friend, that the Church of England has nothing to dread from external violence. Built upon a rock, and lifting its head towards another world, it aspires to an imperishable existence, and defies any force that may rage from without.

But let it beware of the corruption engendered within and beneath its massive walls; and let all its well-wishers, all who, whether for religious or political interests, desire its lasting stability, beware how they give encouragement, by giving shelter to the vermin bred in that corruption, who '*stink and sting*' against the hand that would brush the rottenness away. My learned friend has sympathised with the priesthood, and innocently enough lamented that they possess not the power of defending themselves through the public press. Let him be consoled; they are not so very defenceless; they are not so entirely destitute of the aid of the press as through him they have represented themselves to be. They have largely used that press (I wish I could say 'as not abusing it'), and against some persons very near me; I mean especially against the defendant, whom they have scurrilously and foully libelled through that great vehicle of public instruction, over which, for the first time, among the other novelties of the day, I now hear they have no control. Not that they wound deeply or injure much; but that is no fault of theirs; without hurting, they give trouble and discomfort. The insect brought into life by corruption, and nestled in filth, I mean the dirt-fly, though its flight be lowly and its sting puny, can swarm and buzz, and irritate the skin, and offend the nostril, and altogether give nearly as much annoyance as the wasp, whose nobler nature it aspires to emulate. These reverend slanderers, these pious backbiters, devoid of force to wield the sword, snatch the dagger; and, destitute of wit to point or to barb it, and make it rankle in the wound, steep it in venom to make it fester in the scratch. The much-venerated personages whose harmless and unprotected state is now deplored, have been the wholesale dealers in calumny, as well as largest consumers of the base article,—the especial promoters of that vile traffic of late the disgrace of the country—both furnishing a constant demand for the slanders by which the press is polluted, and prostituting themselves to pander for the appetites of others: and now they come to demand protection from retaliation, and shelter from just exposure; and, to screen themselves, would have you prohibit all

scrutiny of the abuses by which they exist, and the malpractices by which they disgrace their calling. After abusing and well-nigh dismantling, for their own despicable purposes, the great engine of instruction, they would have you annihilate all that they have left of it, to secure their escape. They have the incredible assurance to expect that an English jury will conspire with them in this wicked design. They expect in vain! If all existing institutions and all public functionaries must henceforth be sacred from question among the people; if, at length, the free press of this country, and, with it, the freedom itself, is to be destroyed, at least let not the heavy blow fall from your hands. Leave it to some profligate tyrant; leave it to a mercenary and effeminate parliament; a hireling army degraded by the lash, and the readier instrument for enslaving its country; leave it to a pampered House of Lords; a venal House of Commons; some vulgar minion, servant of all work to an insolent Court; some unprincipled soldier, unknown, thank God! in our times, combining the talents of a usurper with the fame of a captain; leave to such desperate hands, and such fit tools, so horrid a work! But you, an English jury, parent of the press, yet supported by it, and doomed to perish the instant its health and strength are gone—lift not you against it an unnatural hand. Prove to us that our rights are safe in your keeping; but maintain, above all things, the stability of our institutions, by well guarding their corner-stone. Defend the Church from her worst enemies, who, to hide their own misdeeds, would veil her solid foundations in darkness; and proclaim to them, by your verdict of acquittal, that henceforward, as heretofore, all the recesses of the sanctuary must be visited by the continual light of day, and by that light all its abuses be explored!"

Baron Wood laboured hard to remove the effect of this impassioned peroration. In plain fashion, and without any attempt at rhetoric, but with good set purpose, and in a few strong words which none could misunderstand, he pronounced his decided opinion.

"This is an information from the Court of King's Bench. That court has been of opinion that this is a libel, and a fit

subject for prosecution: I have no difficulty in telling you that when any thing is printed and published for the purpose of bringing into hatred and contempt any of the establishments of the country, it is a libel, and ought to be punished; and if it were not so, this liberty of the press, as it is called, might pull down all our institutions. The information charged this to be a libel on the clergy of the kingdom generally, and on the clergy of Durham in particular. If it is a libel with respect to either, the defendant is liable to be found guilty on this information. What greater libel can there be on the established clergy than that? It is said that discussion is not to be checked. What discussion is there in that? It is downright slander. I hope the defendant's prediction will never take place; but it appears to be done with the most malignant intention indeed. It is a direct incentive to the people of the country to subdue the establishments. It is my opinion that this is a libel. But it is said to you that it is no invective upon the clergy. No invective! Is it no invective to tell them that they don't walk in the path they should follow, that they are hypocrites, and have no respect for religion? Is that no invective? It is said there should be free and unfettered discussion; but writings of this sort are free and unfettered abuse. Some quotations have been read from authors. I have no doubt you may look into many books and find libels; but one libel cannot justify another. If the press is at liberty to write and publish any thing it pleases against the establishments of our country, this government cannot last. It seems to me that the defendant should be convicted; for this is a libel, and a very gross libel. I am required by law to give you my opinion, and I tell you that this is a very gross libel."

Mr. Brougham. I am sure your Lordship will excuse me, but you are not directed, only empowered by law, to give your opinion. The proviso in the statute merely saves the right which the Court before had.

Mr. Baron Wood. I may give my opinion as in a case of burglary. I have a discretion to do so.

Mr. Brougham. Certainly, as in other criminal cases, my Lord.

Mr. Alderson contended to the same effect.

The jury, after a few minutes' consultation in their box, retired to deliberate on their verdict. They withdrew at about ten minutes to one o'clock, and at six o'clock returned the following verdict, which they delivered to the Judge at his lodgings,—"*Guilty of a libel against the clergy residing in and near the city of Durham, and the suburbs thereof.*"

The most intense anxiety was exhibited by the public during the time the jury were shut up, an unqualified verdict for the defendant having been expected.

In the following term, Mr. Scarlett moved for judgment on the defendant, and Mr. Brougham in arrest of judgment. Baron Wood had in his notes stated the verdict to be Guilty on the second count of the information. Mr. Brougham contended it was on the first count, and, notwithstanding Mr. Scarlett's disclaimer that they must abide by the Judge's notes, the record was looked at and found to be:—"And the jurors aforesaid say, that he, the said defendant, is guilty of so much of the first count as charges a libel on the clergy residing in and near the city of Durham, and the suburbs thereof; and as to the rest of the first count and the other counts of the information, he is not guilty."

Mr. Brougham then contended that the count was defective, as it charged him with "printing and publishing a libel, of and concerning the united church of England and Ireland, and of and concerning the clergy of that Church, and the clergy residing in and near the city of Durham, and the suburbs thereof;" not repeating the words "of and concerning" before the words "the clergy residing in and near the city of Durham."

Mr. Scarlett asserted, that the words "of and concerning" were in his copy of the information.

Mr. Justice Bayley read the passage from the record, which proved that Mr. Brougham was correct.

Mr. Scarlett. It was so in my copy; I was equally confident with you.

Mr. Brougham. Yes; but there was this difference—you were confident and wrong; I was confident and right. [*A*

laugh.] The difference was merely between a well-founded observation, and one that had no foundation at all. I only mention this to prevent any further interruptions, of which I have had two already.

The learned counsel then proceeded to take two objections to the record;—first, that the count charged an offence different from that which the jury had found; and, secondly, that the offence of which the jury had found the defendant guilty, supposing it to be the same with that stated, was in itself too vague and uncertain to be made the foundation of any judgment.

He also objected, though after verdict the objection seemed too refined, that the term "clergy" was altogether vague, without further explanation; and that the term "near" was indefinite. "Was it one, or two, or ten, or twenty miles? Each man would reply according to his own ideas of nearness, and perhaps no two persons would agree as to the limits within which the libelled clergy resided. The term 'suburbs' was again ambiguous; so that here was a further latitude of proximity almost running into distance.

"The clergy of Durham were not a body of men sufficiently definite. In Lord Raymond it appeared that there was a libel on 'certain ladies of London,' which was removed by *certiorari*, because the Recorder stated that he thought himself affected by it [*a loud laugh*]; and in Salkeld it was laid down that 'where a writing inveighs against mankind in general, or against a particular order of men—as, for instance, men of the gown—it is no libel; but it must descend to particulars and individuals to make it a libel.'"

He further moved for a new trial, on the ground of misdirection.

"Baron Wood in his charge told the jury, 'The Court of King's Bench have been of opinion that this is a libel, and a fit subject for prosecution.' Now the first part of this direction was incorrect; the Court had not given an opinion that it was a libel; but had merely given an opinion that it was a fit subject for a jury to consider whether it was or was not a libel. But if the jury supposed that the case was merely sent to them to execute the opinion of the Court—

Mr. Justice Bayley. He did not tell them that, I suppose?

Mr. Brougham. No; but they might infer it.

Mr. Justice Bayley. Did he not tell them what his own opinion was?

Mr. Brougham. Yes; and that is another ground for a new trial.

The Lord Chief Justice. Then almost every judge who has tried a case of libel since the act passed has been in error; for it has been the uniform practice for the judge to state his opinion, leaving the jury to exercise their own judgment.

Mr. Brougham. Undoubtedly; but he ought not to state it as the opinion of the Court, who have only said that it is a fit subject for inquiry.

Mr. Justice Best. Is it more than saying "the grand jury have found a bill?"

Mr. Brougham submitted that it was very different; it was almost overwhelming the minds of the jury, to tell them in effect that if they found the publication not a libel, they differed from the highest criminal court in the kingdom. His lordship also said, "I am required by law to give you my opinion." Here again he was incorrect; he was not required, but only authorised to give his opinion, as in other cases; and Lord Ellenborough once, in a similar case, having inadvertently used the word "required," corrected himself, and substituted "not required, but it is expected of me."

Mr. Justice Bayley. Do you really think you can prevail on the Court to grant you a new trial, because a judge has used the word "required" instead of "authorised?" He does not say, I presume, that he is dissatisfied with having said so?

Mr. Brougham. No; the report is silent on that subject: he says nothing either way. [*A laugh.*]

The Court granted a rule to show cause why the judgment should not be arrested. In consequence of the pressure of business, the argument stood over till the following term, and the case was never again mentioned. The points of law were doubtful, to say the least; and the prosecutors might reasonably think that enough had been done for their vindication.

TRIAL AT BAR

OF

CHARLES PINNEY, ESQ.,

MAYOR OF BRISTOL,

ON A CRIMINAL INFORMATION FOR NEGLECT OF DUTY,

IN THE COURT OF KING'S BENCH,

October 25, 26, 27. 29, 30, 31, and November 1. 1832.

The Judges present: Lord *Tenterden*, Mr. J. *Littledale*, Mr. J. Js. *Parke*, Mr. J. *Taunton*.

Counsel for the Prosecution: The Attorney-General, Sir Thomas *Denman*, Solicitor-General, Sir William *Horne*, Serjeant *Wilde*, Mr. *Coleridge*, Mr. *Shepherd*, Mr. *Wightman*.

Counsel for the Defendant: Sir James *Scarlett*, Mr. *Campbell*, Mr. *Follett*.

THERE is no principle in our courts of law more sacred than the utter exclusion of politics from its precincts. No echo of the tempest that rocks without is to reverberate within those walls; the sounds of Whig and Tory, Conservative and Radical, are there unuttered: the surge of political discussion, with its hollow murmurs, must there die away; the turbid stream of party strife may not mingle with the calm and equable current of the law.

"Doris amara suam non intermisceat undam."

There are solemn occasions, however, when this strict conventional rule, founded on the clearest principles of immutable justice, cannot be implicitly obeyed, when the whole texture of the case to be discussed seems wrought into and made up of politics.

Of this description was the trial of Mr. Pinney, Mayor of Bristol, for alleged neglect of duty during the terrible Reform Riots, which had swept with devastating force over that devoted town. The sad excesses for which a pretext was made by the entry of Sir Charles Wetherell, as Recorder, into a city that would not tolerate the presence of an anti-reformer, the burning of the Mansion-house, Custom-house, Bishop's Palace, and forty-three private dwellings, — the loss of nearly five hundred lives; — the capital execution of four of the ringleaders; — the suicide of Colonel Brereton, the unfortunate officer in command of the troops; — the alleged supineness of government in not providing more efficient military aid; — the presumed pusillanimity of the city authorities; — the social duties and municipal rights involved in this novel judicial investigation; — the strong display of party feeling which had caused the supposed dereliction of duty; — and the violent political prejudices which had induced a criminal information, made the present an excepted case to the general routine; a trial at bar of the deepest interest to every subject in the realm. The occasion compelled, of necessity, the introduction of party topics, and involved, for a season, the calm arena of the law in the heat and dust of the forum. It was a regular wager of battle between the present and late Attorneys-General, who fought, not with foils, but with unbated swords. Personal innuendo and professional sarcasm, sly and covert allusions to parliamentary conflict and supposed party disappointments, were freely bandied between the law officer of the Crown and his predecessor.

We have, with some doubt and hesitation, determined to preserve these mutual criminations and final manifesto; for the topics involved possess more than a temporary interest, and it is important to show how high-minded gentlemen resented aspersions, and brought forward their causes of quarrel.

The lofty bearing with which Sir Thomas Denman turned aside, as if by a gesture of contempt, the poisoned darts of sarcasm obliquely thrown at him, deserves especial mention.

However painful to individuals, this solemn trial at the bar of the King's Bench, before four of the ablest judges

that ever presided in that court, and the grave inquiries into the duties and responsibilities of magistrates and military men in times of civil commotion, were of great public benefit. This full and severe investigation ought not to be deprecated, nor should much blame, under all the circumstances, be imputed to the government for instituting such a penal proceeding. The whole conduct of the mayor and magistrates had been invested in so thick a cloud of party prejudice, their fate had to struggle through such dense mists of passion and political hatred, that the prosecution seemed a painful necessity to clear from all stain or stigma the character of the chief magistrate. The height to which popular calumny had reached was proved by a letter that Captain Codrington, a country gentleman, and commander of a troop of yeomanry, had written to the Secretary of State. This document, drawn up with the form and intended accuracy of an official report, stated that he had received the mayor's requisition between two and three o'clock on Sunday afternoon, and assembled his troop of yeomanry cavalry by seven. "Having fifteen miles to go, and the night being very dark, we could not reach Bristol till after nine, when, I lament to say, we found the city on fire in many places. Having paraded through the principal parts of the city for more than two hours without being able to find a magistrate,—*hearing that they had in fact left the town, after withdrawing both His Majesty's troops and the police,*—finding ourselves thus unsupported, and without a hope of being in any way serviceable, the city being actually in the uncontrolled power of the populace, I had no alternative but that of withdrawing my men, and we returned home about five o'clock this morning."

The portion of the letter in Italics was a total perversion of the real facts; but when such extraordinary mis-statements as these had been forwarded to persons in authority, a full and searching investigation could not with propriety be avoided.

The Jury by their silence seemed to have questioned the sound judgment of Mr. Pinney during the whole of his command, and the evidence undoubtedly throws a doubt upon his discretion on part of the evening of Sunday. Contrasted with

the vacillating, temporising, pusillanimous conduct of Colonel Brereton, his demeanor was marked by absolute wisdom. Of his zeal and courage, his untiring exertions, and fearless exposure of his person, there ought to be the most honourable mention. Many a public functionary has been girt with the honours of knighthood, and received public thanks for conduct less meritorious: —

"Ille crucem sceleris pretium tulit, hic diadema."

Had he been seconded, as Sir Thomas Phillips, the Mayor of Newport, was by Captain Gray, Mr. Pinney might have been equally fortunate in securing the public gratitude to himself, and safety to the city. So far as respected his zeal and personal courage, he came through the ordeal so unscathed, that the smell of fire scarcely passed upon him.

The evidence produced on the trial taught also a memorable lesson with respect to the unreasoning tyranny of a mob. For what mighty reason had there been this waste of life and property?—why had Bristol been treated by its own inhabitants as a city sacked, taken by storm, and given up to pillage? Simply because their eccentric, but able and straight-forward Recorder, dared to think for himself, and to dislike the Reform Bill; that he had argued most ably and effectively against it, and, deceived by some lull in the public agitation, had ventured, in the House of Commons, to talk of reaction. An insulted population of 100,000 would not permit the rash utterer of such political heresies, who dared to avow his own opinion against their sweet voices, and, undaunted by clamour, would think and reason for himself, to enter the city in safety, even for the performance of his judicial duties! If they did not attempt his life, and burn down the Mansion-house, his temporary dwelling, these liberal reformers feared there might be some further talk of returning sobriety. According to their own parody, the Tory might say in his heart, there is reaction. After opening the commission at all risks, the Recorder was forced to retreat at night from the Mansion-house, over the roofs of the adjoining houses, and to escape from the infatuated town. He made no reply to the shouts of calumny with

which his entrance into Bristol, and flight from it, was assailed, till Parliament had again assembled; and then, amid the cheering of the House, to the utter discomfiture of his accusers, gave a clear narrative, a complete exculpation of his conduct.

"It was not true that he disappeared from Bristol, until after the bed of the chief magistrate had been taken off the bedstead, and put in the window of the Mansion-house, to make a barricade. Then he certainly did think that the presence of the judge was no longer necessary! The gaol delivery was terminated. If he had not gone, he knew that no man could approach within a hundred leagues of telling him what imputations, what sneers, what insults, what terms inconsistent with the respect due to a gentleman, and a member of the House of Commons, would have been poured upon him by the many-tongued, many-fanged, foul-mouthed, venemous press of England. Would it not have been said that he had basely and falsely declined to attend to his duty, through a feigned apprehension of tumults, which no one else had ever dreamt of? Would it not have been said that he was a false and deceitful anti-reformer; that he had invented the tale of projected riots, and that with the cowardice which is the constant companion of falsehood, he shrank from encountering the danger which his own invention had alone created? If ever it was allowed that vengeance should be wreaked upon any man for his political opinions, there would be no safety for the person or property of any man; and the partition wall which divided the castle of the Duke of Newcastle from the mansion of any reformer, was too thin to prevent the conflagration from devastating the latter. The custom-house of the Chancellor of the Exchequer (Lord Althorpe), a reformer, had been burnt to the ground."

The House of Commons cordially responded to the vehement and indignant remonstrance of the insulted magistrate, for a body of gentlemen must have made his cause their own. It would indeed present a sad omen of degenerate feeling in a free people, were a manly independence of opinion and bearing, the more manly for braving popular clamour, to expose its possessor to personal violence,—were English gentlemen not

to sympathise with his wrongs. Happy would it have been for the officer in command, could he have cleared himself from all imputation with the same success as Sir Charles Wetherell. The court-martial summoned to inquire into the conduct of Colonel Brereton met at Bristol, on Monday, January 9th, 1832, presided over by Lieutenant-General Sir Henry Fane, and sat four days. Major-General Sir Charles Dalbiac conducted the prosecution with great spirit, and spoke with the eloquence of indignant feeling.

"From eleven o'clock," he said, "on Sunday night till half-past four on Monday morning, an awful interval of more than five hours, through the whole of which the robber and the incendiary were proceeding uncontrolled from atrocity to atrocity, and public and private property were consigned to fire and pillage, not a soldier interfered. Colonel Brereton had gone to bed!"

Some of the facts proved in evidence told their own story, and rendered all comment superfluous. The 14th Dragoons fired effectively on the Saturday night, and killed a rioter; next day Colonel Brereton ordered them out of the town. He sent Cornet Kelson to the gaol at the time the mob were battering it down, with peremptory orders to use no violence, but merely to go there, show himself, and return. Before the court-martial the Cornet was asked what report he had made to Colonel Brereton on his return with the troop? His reply was, "I said I had done what he had told me, nothing."

When the Mansion-house was burning, Colonel Brereton arrived with a detachment of the 3rd Dragoons. The troops walked their horses quietly along the square, wrapped up in their cloaks to protect them from the rain. After remaining a quarter of an hour, Colonel Brereton marched them off; and, from that time to the following morning, not a soldier was ordered to the square, or the slightest effort made by the troops to check the destruction of public or private property. "At a time," repeated Sir Charles Dalbiac, "when the city seemed to be threatened with total destruction, Colonel Brereton thought fit to retire to his quarters and to rest." This infatuation of a brave, but injudicious, officer,

trammeled by his instructions not to act except in the last extremity, was expiated by a fearful penalty. He saw disgrace impending, and arrested it by suicide.

After the proceedings of Thursday, Colonel Brereton, it was said, returned home distracted, omitted his usual visit to the bedroom of his children, but sat up till three in the morning; then retired to his room, and shot himself through the breast with a pistol, which he had put to his side with his left hand.

Another court-martial was held on Captain Warrington, the second in command. He said he could not act without a magistrate going every inch of the road with him. "There was a great screw loose somewhere." When Alderman Camplin, about four on Monday morning, urged his sending troops to Queen Square, or the whole would be burnt down, he told him the horses and men were all tired, he could not send more than twenty-four. "I replied," said the Alderman, "Go yourself." He said the troops should not fire nor go without a magistrate. "I said, I would go with them." He then said "The troops cannot go till I have seen Colonel Brereton." They went and found him after being denied! Colonel Brereton had ordered him not to move before calling upon him, and not to call upon him till the last extremity. Major Beckwith declared, that he thought Captain Warrington and the 13th Dragoon Guards in a great measure paralysed by the imbecility and misconduct of those who ought to have directed them; and, when pressed for an explanation, said, he alluded to the officer in command, and the magistrates. The conclusion of Sir Charles Dalbiac's reply deserves praise for its spirit of martial eloquence, and the clearness and vigour with which he enforces the duties of a soldier in periods of popular commotion.

"I would abhor the soldier that could take advantage of tumult to shed unnecessarily one drop of blood. 'Bear and forbear,' should be our motto! But there are occasions when forbearance ceases to be a virtue.

"Is it that we are maintained only that our services shall be employed against a foreign enemy? Is it that we are paid by the public, and that we have no domestic service to perform? Shall the open rebel, the public robber, and the

midnight incendiary, be suffered to stalk forth in our streets, to proceed from atrocity to atrocity, and His Majesty's troops be told that they can lay no hand upon them but in the presence of a magistrate? Shall our laws be violated in their best and dearest intention, the destruction of public and private property be carried on in a systematic progression? Shall our gaols be forced at noon-day and the felons let loose upon society? Shall our city be fired at all points, and sacrilege be carried on to the very threshold of our altars, and British troops be taught that they must stand by and look on, or be held fast in their quarters till a peace officer shall arrive to command and to direct their exertions? Shall the aged and the infirm, the sick and the helpless, the nursing mother and the nestling infant, be torn from their beds at the dead of the night to glut the reckless fury of the plunderer and the incendiary, and the British soldier be told that he must stretch forth no hand to save without the sanction of a magistrate? God forbid! I say God in heaven forbid! May the flames of Bristol serve as a beacon to every town and city in the kingdom!"

Captain Warrington was cashiered, but afterwards, on the earnest recommendation of the Court, allowed to dispose of his commission at the regulated value.

Upon the duty of officers and troops, during a time of riot and tumult, which had been too long left in doubt, a clear light was also thrown by the mild and gentle wisdom of Chief Justice Tindal when he presided over the special commission at Bristol.

"It may be safely concluded that if the excitement which led to the defiance of the law at the earlier period of the day had never existed, the weightier crimes subsequently committed by the populace would not have taken place. The beginning of the tumult is like the letting out of water, if not stopped at first it becomes difficult to do so afterwards, it rises and increases until it overwhelms the fairest and most valuable works of man. The soldier is still a citizen lying under the same obligation and invested with the same authority to preserve the peace of the kingdom as any other subject. If the one is bound to attend the call of the civil

magistrate, so also is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose when arms are necessary, the soldier may do the same. Undoubtedly the same exercise of discretion, which requires the subject to act in subordination to, and in aid of the magistrate rather than upon his own authority, before recourse is had to arms, ought to operate in a still stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the king, like his civil subjects, not only may, but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people."

The penalty exacted from the rioters under the Special Commission was heavy and severe, for the consequences of their deeds had been appalling. Of the ringleaders convicted 4 were executed, against 26 judgment of death was recorded, 1 was transported for fourteen years, 6 for seven years, and 43 sentenced to various terms of imprisonment with hard labour. The pecuniary loss was of far inferior moment; but it appeared from the Report of the Commissioners appointed under the Bristol Damages' Compensation Act in 1835, that 100,000*l.* had been claimed as compensation, and that the total burden entailed was 68,000*l.* In the Birmingham Riots in 1793 there were 121 actions, for which 36,000*l.* was paid for damages and costs. As a natural sequence to the Courts-Martial and Special Commission, ten criminal informations were filed against the mayor and his brother magistrates, and the amount of guilt supposed to lie between the civil and military authorities sought to be duly discriminated. In deference to his rank, the trial of the mayor took precedence, and his culpability, when cleared from prejudice, scarcely weighed a feather in the balance. There were only three precedents to be found

of criminal proceedings against mayors and civil authorities for similar neglect of duty, and they were neither so lucky nor so deserving as the Mayor of Bristol. The first instance occurred in the sister kingdom, at the commencement of the last century, when the Provost of Glasgow, three bailies, the Dean of Guild, and Deacon Convener, were all committed to gaol by the Lord Advocate, Duncan Forbes, as abettors of a riotous mob, and for negligence in their office. They were afterwards admitted to bail, having been taken in a sort of triumphal captive procession to Edinburgh. The cause of their disgrace may be shortly told. The malt tax had just been extended to Scotland, and Daniel Campbell, of Shawfield, member for Glasgow, who voted for the bill, had his house attacked by the mob. Captain Bushell, who commanded two companies of foot, sent to the provost, desiring to know if he should beat to arms and parade his men. The provost declined giving any order on the subject, and urged two reasons against the proposal, — that as the troops must be tired with their day's march it were a pity to disturb them, and that the beating to arms would alarm the peaceful citizens! The civil magistrate evading his responsibility, the military fired on the mob, and killed several. The provost at last acted. He sent to Captain Bushell to request that he would leave the town! The Lord Advocate, in person, made the preliminary inquiry or "precognition" which precedes a criminal trial in Scotland. He taunted and abused the magistrates, says Wodrow, on examining them, and scoffingly asked, And are you a bailie? When the Advocate was questioned how the town should be governed, if the magistrates were incarcerated, he said there was no fear of *dispeace* when the heads of the mob were imprisoned. The magistrates were detained in prison for a brief period, from 16th to 20th July, and then only released on an appeal to the Secretary of State.

The civil magistrates at Edinburgh scarcely fared better in 1738 than their insulted brethren of Glasgow. The Porteus Mob, having surprised the city gates, broken open the Tolbooth, and executed, at their own wild pleasure, the unlucky captain of police, without the slightest attempt at

opposition, and without even the persons of the ringleaders being recognised, government threatened with its extreme vengeance the supine and conniving magistrates. Grave were the discussions in parliament, and heavy the penalties denounced; but all ended, after a fearful interval of suspense, in a pecuniary fine, to be paid out of the city funds to the widow of the murdered man, who perished from a sense of vindictive justice in the multitude, however lawless in its form. The last example of the serious consequences to which neglect of duty may expose a magistrate occurred in 1780, when an unlucky pastrycook was lord mayor of London, and beheld, as a staunch Protestant, with placid acquiescence the attacks on the persons and dwellings of the Roman Catholics.

He had been informed at the Mansion-house that the mob were burning the Roman Catholic houses in Moorfields, and sent for a body of military from the Tower. When pressed to go and accompany them, he went to Moorfields and witnessed the conflagration, but before going asked the messenger whether he was a Catholic. He said he was. The mayor said, "I thought so;" and then delayed his departure for a considerable time. When he did venture at last, he was desired by the officer of the company to read the Riot Act, and refused; he was pressed by several people, and still refused; he saw the houses burning before his eyes, and would not authorise the military to act, giving as a reason for it that the people were only burning the property of the persons they thought their enemies, and when they had done that, they would be satisfied. Lord Beauchamp, who had the command of the Tower, went himself upon the ground; he had sent the troops, and was a witness against the mayor. "We asked him why he would not read the Riot Act? He refused, and stated the same thing as he had stated before. I said, 'I will report you to the House of Commons;' but the mayor continued obstinate." He was very properly indicted on a specific charge, "that whereas there had been a riot, and the mob were burning houses; and whereas the Lord Mayor had notice of it, and whereas it was his bounden duty then and there to read the proclamation contained in the act commonly called the Riot Act (which commands the magistrates to repair to the place and read the proclamation); that he having

notice of this duty, and being requested to perform it, he maliciously, wilfully, and knowingly refused to do it." Mr. Kennett for this criminal neglect was tried before Lord Mansfield at Guildhall, — the judge who of all others had suffered most by his negligence and folly, — found guilty, and fined in the sum of 1000*l.* The case of Mr. Pinney seems the converse of this, deserving reward and not punishment, a recommendation to favour rather than the official notice of a criminal *information.*

The exordium of the Attorney-General was worthy of the occasion; grave, calm, severe, as befitted the public prosecutor. His speech dealt more in general allegations of supineness and sweeping accusations of neglect than condescended to particulars or specific facts.

"You are called from your homes in the discharge of a most important duty, for the trial of an individual who has been placed in an office of high trust and authority, and who stands charged with having betrayed that trust by not exercising that authority for the protection of those who were placed under his care. He was the Mayor of Bristol at the time that dangerous riots took place there; and we charge him, on this information, during nearly forty-eight hours of riot, when that city was in a state of confusion and consternation, the most alarming and most dangerous, and when crimes of the deepest dye were committing under the eyes of all, with having neglected the duty of his office, — with having abandoned that duty, — with having withdrawn from being known and discovered by those who might require him to act in the discharge of his office. Such is the very important accusation which we prefer against Mr. Pinney.

"I am sure it will be needless for me to intreat your most careful attention to all the facts that we shall lay before you, convinced as I am, upon the statement I have received, that in the result no doubt can be entertained that that charge will be most fully substantiated. The basis of the accusation, Gentlemen, is perfectly public and notorious; it must be proved almost as a matter of form to-day, as it is unquestionably known to all of you, and to all the king's subjects,

and indeed to the whole civilised world, that the city of Bristol, one of the very first rank in the British empire, was, for the long period I have mentioned, in the state that I have described; when it is further added, as it appears upon this information, that three gaols, two within the city and one in its immediate vicinity, were broken open by a lawless mob, — that the prisoners were let loose for the perpetration of fresh crimes,—that spoliation and plunder were carried on for a great length of time, — that not only these three gaols were destroyed by fire, but that the Mansion-house of the chief magistrate was also so destroyed; that the bishop's palace was reduced to a heap of ruins, and that after that period the houses of many individuals were plundered and demolished, to the extent of little short of forty of the best houses in the town. I state nothing but what is familiar to you all, but which I think, in the mind of all, raises at once a *primâ facie* case against the magistrates who were invested with authority, and leads every one to inquire, during that long and fearful period, where were those magistrates — what was their conduct — in what manner did they exert their authority — and what precautions did they take to prevent such dreadful evils? It were an idle waste of time to gentlemen of your intelligence, to pretend to lay down the duties, as the law-books describe them, of magistrates upon those occasions. The very name of their office describes them sufficiently for the present purpose. All magistrates are emphatically conservators of the peace. When the peace is threatened, when the peace is endangered, it is their duty to interfere to preserve it; and when it is broken, by the most alarming crimes, they are called upon by their office itself to endeavour to prevent those crimes by all the means in their power; among which, the principal is the authority with which they are invested by the law, of compelling every man within the sound of their voice to take up arms, if it be necessary, and to employ all the force they are capable of assembling, for the preservation and restoration of the public peace. Such is the known duty of every magistrate — the duty assumed by all the gentlemen of England in their several counties — a duty imposed upon those corporate ma-

gistrates, who, as in the present case, are, by their charter, invested with similar authority."

The Attorney-General then gave a perspicuous history of the calamitous events, and interspersed his narrative with keen remarks on the supineness of the chief magistrate.

The general charge resolved itself into one of non-feazance, the leaving undone that which as mayor he ought to have done, and embraced three specific periods of time:—From the preparations to meet Sir Charles Wetherell till his entry, arrival at the Mansion-house, and departure at twelve o'clock on the Saturday night; from the dawn of Sunday to the burning of the bishop's palace at about three o'clock in the afternoon; and from the Sunday evening to the dispersion of the mob in Queen Square, between nine and ten on the Monday morning.

The criminatory accusations of the Attorney-General, rather rhetorical than logical and concise, against Mr. Pinney were,—Betrayal of his trust—Withdrawing from duty—Absenting or secreting himself—Not compelling citizens to take up arms—Omitting to employ their force to restore peace—Not accompanying Colonel Brereton on Saturday evening—Never giving precise and specific orders—Not summoning justices and civil force to meet at the earliest hour on Sunday—Not organising the civil force—Making no effort on Sunday to collect a force about him—Inviting not commanding their attendances—Advertising for plans, not devising any—Doing nothing to save the Bridewell—Nothing to save the gaol—Not placing a few sheriffs' officers there—Not going and acting with the troops there—Not authorising use of arms—Not leading the body of gentlemen to the palace—Thinking about his own personal safety—Hiding himself after escaping from the palace, so that Captain Codrington had to seek a magistrate in vain—Discouraging those who offered aid—Not calling out the Chelsea pensioners—Omitting at every moment something that ought to have been done—Taking no steps to suppress the mischief: a long black catalogue of criminations, involving incapacity, supineness, negligence, personal cowardice. Rarely have articles of charge been more completely dis-

proved. So far from playing the poltroon, he was, says Major Mackworth, the coolest and most collected of the party; instead of negligence he never changed his dress or took a regular meal for thirty-six hours; so little supine, that he was every where, and would not leave Bristol. He never went to bed on Saturday and Sunday nights. Incapacity there was none, but some few errors of judgment, venial, light as air, compared with those grave offences that Colonel Brereton committed. The civilian displayed more gallantry, more conduct, more skill, than the soldier. With the exception of pardonable mistakes of judgment, as to the existence of which there will be, on the evidence, conflicting opinions, never was a vindication more decisive and complete, on the point of personal bravery triumphant.

The evidence adduced on the trial was not more satisfactory in vindicating the character and conduct of the magistrates, than condemning the proceedings of their accusers, the self-styled liberals of Bristol. But before extracting the evidence, it may be well to notice some of the few specific acts of commission and omission which the Attorney-General charged upon Mr. Pinney.

"Undoubtedly the mayor did, on two occasions, read the Riot Act; but there was no personal interference of the magistrates — no personal exposure of themselves as the leaders of that military force — no offer to go along with the military where the sword might be required to be used, as I apprehend you would think there ought to be, before the military were called upon to exercise their power on the bodies of the assembled multitude; and among all the devices proposed, almost the only one resorted to, to restrain this very dreadful tumult, described by the mayor himself as one of the most fearful scenes which had ever been exhibited, was to get a dissenting minister, a gentleman, I believe, of great respectability and great power of eloquence, to go and make a speech to these persons."

The preacher must have been dreaming of the lines in Virgil;

> "Jamque faces, saxa, volant; furor arma ministrat
> Tum, pietate gravem ac meritis, si forte virum quem
> Conspexere, silent ——"

but unfortunately the populace were not classical. "It was also suggested," said the Attorney-General, with a sneer, "that at the end of sixteen hours the *posse comitatus* should be called out.

"Gentlemen, if that kind of mockery is to be practised, if it should be possible to suppose, which I do not suppose, God knows, that there was even a wish that this should go forward, — I do not know how that could be more effectually done than by the very palpable absurdity of telling persons to separate while the mob was plundering the city, to go home quietly while the mob was still increasing, and to meet again the next morning, when the whole evening and night had been devoted to their acts of plunder and devastation."

The grave accuser thus recapitulated his charge: "These are the general circumstances of the case; and what we charge upon the Mayor of Bristol is, that he did not in any degree exercise the power of that office as he was bound to do; — that he exerted no authority which he had for the preservation of the public peace and protection of the citizens, but that with full knowledge that other mischief was likely to ensue; — with full notice on the Saturday that they were likely to be repeated with the same violence on the Sunday; that they were rapidly committing one mischief after another, the most dangerous and fatal, — this gentleman, having full power to call in the assistance of every citizen, on the contrary threw himself on their mercy, to suggest something which they had no business to consider, and which the magistrate ought to have dictated and imposed upon them; and not even calling upon the military at a period when the military should, in concert with the civil force, have taken some decisive means of restoring good order. During the whole of that time, from the beginning of the burning to the extinguishment of the last fire, there was no magistrate seen in Queen Square; no single constable called upon by the magistrates to act; no troops with whom the magistrate put himself into the situation of acting so as to give the aid of military force to the civil authority. I submit there was a continual duty upon him during the whole of this awful period, which he ought not to have neglected; that there

was no period at which he ought not to have been providing force, even though they could not have acted at that moment with benefit; and that he cannot stand excused from the dreadful events brought on the town of Bristol on the grounds of the statement he has presented. It will be satisfactory that his own statement should be read, and the circumstances of the case will be laid before you by a variety of witnesses who attended at the council-house, and are perfectly aware of all which was going on.

"Gentlemen, this is the general nature of the case, and I shall leave it in your hands. I do not wish to aggravate it by any observations which I have thought it my duty to make, and I do not wish to state too highly the duty of magistrates,—all the king's subjects have a right to expect common and ordinary protection in the moment of alarm. It appears to me that protection has not been extended in the present case; the mayor was the person whose duty it was to extend it. The facts I have stated, which I have no doubt I shall fully substantiate, will prove that there has been great neglect of that duty; and this misdemeanour, I apprehend, will be fully and satisfactorily established."

It appeared from the evidence for the prosecution, that on Saturday, October 29th, 1831, the Recorder entered Bristol in state to hold the assizes, and that, to prevent tumult, his entry had anticipated the usual time nearly three hours, by direction of the magistrates. The length of the procession was also abridged nearly two miles. Three hundred constables were marshalled to escort and protect Sir Charles Wetherell to the Guildhall. Stones flew in all directions, and Sir Charles was hit. He was undaunted, however, and told the magistrates at the Mansion-house, when the hooting grew more clamorous, and the missile-throwing more active, that there was not a case sufficiently strong made out to justify them in sending for the military.

As the evening advanced, the attack increased in fury: his life being in danger, the Recorder escaped from the Mansion-house at six o'clock, and left the town at ten at night.

Though not above fifty rioters were at first actually engaged in the attack on the Mansion-house, some thousands

of persons looked on acquiescent, if not approving, and paralysed the efforts of the civil force. Many of the peace officers in the House, awed by the fury of the mob, refused to come out and have their heads broken. At length they were formed in some degree of order by Major Mackworth, and, being drawn up in bodies of about a dozen, charged the people, and, for a short time, succeeded in clearing the square. The mayor harangued this civil force on their duties, and at night gave them about sixty or seventy flambeaux, the populace having put out the gas. As they returned, after being dispersed, in greater force, and with increased violence, the mayor went out in person, and mounted on a chair, being small in stature, and deformed, read the Riot Act twice. There were about two hundred actual rioters present, who pelted him with stones, brick-bats, and pieces of glass bottles, but he went on with, and finished, his reading. The apathy of the citizens was remarkable; of the thousands assembled outside the Mansion-house none interfered to check the attack. To promote quiet seemed dangerous, for it might countenance the cry of reaction. Shouts of encouragement were raised during the assault, and on the arrival of the 3rd Dragoon Guards they were lustily cheered, and the soldiers joined in the cry of the King and Reform, and shook hands with the mob. The 14th Light Dragoons, who came up afterwards, were groaned at, for they evinced no disposition to fraternise with the lawless assemblage. The military formed a very small force. There was one troop of the 3rd Dragoons, commanded by Captain Warrington, ninety-three in number, and two troops of the 14th, under the orders of Captain Gage; but a senior officer, Lieutenant-Colonel Brereton, being at Bristol on the recruiting service, assumed the command of both squadrons. From the first this injudicious officer adopted a temporising policy, and sought to pacify the populace by thwarting all decisive measures, doing as little as possible, or doing nothing. On his arrival in Queen Square he assured the people that he was a Reformer, like themselves, waved his cap, and cheered for Reform, and shook hands with all around. The 3rd Dragoon Guards did the same, and appeared soon to be hand and glove with the

rioters. Emboldened by this show of alliance, they proceeded vigorously in demolishing the front of the Mansion-house. Just before the troops came up, a Quaker, Mr. Waring, quietly watched two men cross the square with a large bundle of straw, and carry it into the Mansion-house. According to the mayor's statement to the Secretary of State, read by the Attorney-General: "The people on the outside had driven in the constables, torn up the iron railings in front of the house, and with stones and large pieces of timber battered in the windows, and window frames, and the panels of the doors, and were with the greatest difficulty prevented from forcing a complete entrance by having the windows and doors barricaded with beds and furniture. They had entered into the dining-room, and another room on the ground-floor, and destroyed the contents, and had made such a breach in the large street-door as enabled them to rake the hall with stones and large bars of wood; and they had, as it appears, provided and placed straw in the dining-room for the apparent purpose of setting fire to the house. Upon the appearance of the soldiers the people withdrew from the attack, but did not disperse; and directions were given to Colonel Brereton, who came to the magistrates for orders, to get the streets cleared." None of the magistrates accompanied him to see their orders executed. He returned to report from time to time, and promised that he would soon disperse the people by merely riding the troops about, as they were very good-humoured. This promise was so far made good that soon after midnight the square was nearly empty. Two dragoons of the 14th were, however, brought in severely wounded, as well as several special constables. The mayor sat up through the night in the Mansion-house in his state dress. He had no bed to lie down upon, some of the beds having been used to barricade the windows, and the wounded soldiers and constables being laid on the rest.

About seven o'clock on Sunday morning the mob re-assembled, and pulled down what remained of the iron railing, and broke in the barricades that had been put before the Mansion-house windows during the night. Several hundreds had collected again. Colonel Brereton had ordered to their

quarters the small picquet of cavalry (which paced during the Saturday night in front of the Mansion-house), and none remained to resist their breaking in. They continued, during the whole of that day, plundering and destroying. A ludicrous account was given of the panic these proceedings caused the inmates. According to the statement of Townsend, a gardener and discharged servant of Sheriff Lax, but which was afterwards proved to be highly coloured, and in parts wholly false, one of the sheriffs had fled to the Recorder's bed-room and taken refuge behind the state bed; and other aldermen were *latitat*ing in the upper bed-rooms. Townsend having disguised himself in a sailor's dress, and climbed on the leads of the Mansion-house, saw the mayor in the larder in the act of escaping.

The examination by the Attorney-General thus proceeded.

Was the mayor by himself there?—He was not.

Who was with him there?—Three or four of the female servants.

Were they doing any thing?—They were making great efforts which should get up first.

Who were making these efforts?—The female servants and his worship.

[*Laughter among the auditors in court.*]

Lord Tenterden. It is great folly for people to be laughing.

Mr. Attorney-General. Did any one say anything to you?—His worship.

What did he say?—For God's sake, young man, assist me up here.

Did you give any assistance?—I laid down flat on the leads and bent over, the female servants with myself assisted his worship.

How do you mean that they assisted his worship?—They assisted him behind.

[*Laughter among the auditors in court.*]

You assisted the mayor up?—Yes.

Lord Tenterden. I wish those who cannot behave decently would leave the court; it is very disgraceful for people to

conduct themselves in this way; if any person is brought to me, I will commit him.

The scene described was absurd enough; but it proved to be an entire fiction. After escaping over the tops of the adjoining houses, Mr. Pinney repaired to the Guildhall, and earnestly entreated all he met to go there and to the council-house, that they might consult on what was best to be done. He afterwards caused written notices to be read in the different churches and chapels, "That the magistrates earnestly entreated the assistance of their fellow-citizens, to restore the peace of the city, by immediately assembling at the Guildhall."

About thirty assembled there, the population of Bristol being above 100,000. Alderman Hillhouse proposed their going to Queen Square, to the Mansion-house, to reason with the mob. They went, and found about one hundred and fifty or two hundred, drinking and very boisterous, calling for Sir Charles Wetherell.

The mayor said they had too few military to disperse them. The Quaker, Mr. Waring, suggested, as they felt they were not strong enough, whether or not some *ruse* might not be resorted to, to attract the mob away,—an effigy, or something of that sort. Mr. Roberts, a dissenting teacher, proposed a speech. The question, speech or effigy, being put to the vote, the mayor proposed that they should go with Mr. Roberts; that they should all act in concert and keep together. They went, and Mr. Roberts attempted a speech, but the mob were drunk, noisy, and engaged in throwing stones: the voice of the charmer failed. They must have been very drunk, for they said, "If the Quaker will tell us Sir Charles has left, we will believe it." Mr. Waring then assured them that he had left, but they went on throwing stones.

Sir James Scarlett, in cross-examination, did not spare the Quaker who reported this forlorn adventure, for his wily suggestion of an effigy.

"I observed you were a long time labouring out that you suggested there should be somebody burnt in effigy?—Yes, I did.

Did you not suggest Sir Charles Wetherell?—I will not say that I did.

Will you affirm that you did not?—No, I will not; I thought at the time that would be the most effectual effigy to draw off the mob.

You thought Sir Charles Wetherell would be the best, with his hands in his pockets?—No, I never had the pleasure of seeing him, and I did not picture him in any attitude.

Will you venture to say that in terms, you did not name him?—No, I will not; I think it is possible I did.

Is it not probable?—I think it probable.

Do you not believe you did?—I do not think I did to the magistrates; to some persons I went with from the square I did.

Did you not name him to the magistrates as the person to be burnt in effigy?—I believe that I did not.

You said you thought it probable you had named him?—I do not think I did.

Do you not think it probable that you named him?—Perhaps it is.

Did you not propose in terms, the effigy to be that of Sir Charles Wetherell?—No, I did not propose it in terms; I believe I did not propose it in terms.

You say that upon your solemn affirmation you did not mention his name as the person to be burnt in effigy?—I believe I did not.

Did you not mention him as recorder?—No, I believe I did not; but if they had put it to me what effigy——

Do not put that upon me; I am asking what passed, and you had better reflect upon it, as there were two magistrates present. Upon your affirmation, did you not state Sir Charles Wetherell, or the recorder, so as to indicate he was the person to be burnt in effigy?—I do not believe that I did, but it was most present to my mind that that would be most effectual: it was self-evident that that was what I meant.

You proposed a burning in effigy?—Yes, as a point of attraction.

The dissenting minister proposed a speech?—Yes.

Did you endeavour to get him a hearing?—did you say, "Here is this gentleman, an eloquent man; you had better

hear him?"—I did endeavour to do so; but there was such an uproar and noise; there was huzzaing and all sorts of noises.

Were any of the military there?—There was a number of women there endeavouring to release a little boy; and I believe that interested them, and prevented Mr. Roberts being heard."

The bias under which the witness spoke was thus adroitly exposed.

"You have seen the briefs of the Crown?—I do not know that I have seen the briefs of the Crown. I have seen the case, with a note in the margin of the witnesses.

Did you never say you had read the Crown brief?—I think it very likely.

Have you not said you had?—I do not know that I did.

Did you not say you had read the Crown brief? I believe I did.

Is it impossible for a gentleman of your persuasion, which is a very pious one, to give a direct answer?—I wish to give a correct answer; my doubt is, whether it is a correct expression for me to say that I have seen the Crown brief. I have seen the document containing the case.

Did you assist in preparing it?—I did not.

Did you correspond with my learned friend the Attorney-General?—I may have heard from the Attorney-General, but nothing touching the case.

Did you not write to him?—Yes.

Upon the subject of this prosecution?—I do not know that I have. I believe I have not; but I will consider whether I have before I make an answer.

I do not know whether you have, but I want to know whether you have not said that you have?—Certainly not on this prosecution.

Perhaps Lord Melbourne; you may have favoured him with some communication?—No, I have not."

According to this witness, the rioters were most open in communicating their plans. "They said, We will do no more here, we will go to the Bridewell and release the prisoners that were taken last night; and then we will go and release those prisoners Sir Charles was to have tried."

Upon hearing this he hastened with his news to the Mansion-house, and told Alderman Hillhouse, who treated it very lightly, and said, "Never mind, never mind; the walls and gates are strong enough."

"This Bridewell," said the Attorney-General, "was remarkably situated; with the governor's house on one side, and the gaol on the other, and a very narrow passage, having gates at both ends opening into streets; a place more susceptible of defence it was hardly possible to describe; and if only a few of the sheriffs'-officers in attendance on the Corporation had been placed there when notice was first given that the Bridewell was about to be attacked, it might have been attended with success. The gates were beaten open with hammers in three hours' time, no resistance being made, and the place was pulled down, and the inhabitants of it became the plunderers of the town."

Meanwhile a messenger from the Bridewell brought the news to the magistrates at the Guildhall Chamber, and found them at their wits' end.

"I stated that Bridewell was attacked, and that they were in the act of releasing, or had released, the prisoners, and they were going to set it on fire; and I requested the magistrates to come immediately to the assistance of Mr. Evans, as it was impossible to protect the prison. I requested that they would not delay, or in a short time the place would be in flames. I believe the reply was, 'You say they have released the prisoners—pooh! pooh! there will be nothing more done!'"

On the heels of this messenger came, with fiery speed, Mr. Humphreys, the gaoler, and stated that the prison was attacked, or about to be attacked, and requested to know what he was to do; whether he was to defend the prison, or release the prisoners. After a pause of two or three minutes, Mr. Alderman Hillhouse stated, "Mr. Humphreys, you are to use your discretion as to the prison; but mind, the magistrates give you no direction."

Two aldermen and twenty-five inhabitants, unarmed, for it was particularly requested that they should not even carry staves, repaired to the scene of mutiny, and found about

three hundred busied breaking into the gaol. This small undisciplined and unarmed force was assailed with a shower of pebbles, mud, and stones, and forced to retreat. The gaol was taken, and the prisoners, to the number of a hundred and fifty, were released, ready to join in any act of violence, plunder, and conflagration. The dock gates were then fired; the toll-houses were afterwards fired, and a third prison, Lawford's Gate, broken open. The criminal apathy of the citizens, who looked on as if at some interesting spectacle, was admitted by Mr. Selfe and others in their cross-examination.

"I wish to know, on your representation, how it happened that, there being two or three thousand persons in the island, and five or ten thousand looking on, who had come there, so small a number was allowed to do what they did?—Because there was no person to organise those who were willing to have defended the place.

Supposing that you were walking past a house, or a gaol, and saw a handful of persons set it on fire, forty or fifty persons might have prevented that, could not they?—Yes; if there is any one over the forty or fifty persons.

Did you ask any persons to assist you?—I did not.

Did you hear any persons ask others to assist?—I did not.

Of those two or three thousand on the island, there were a great many men like yourself?—Yes.

Probably the majority were men?—I should say they were.

You did not observe among them the least disposition to go in, and prevent the gaol being sacked and burnt?—They did not do it; they might have a disposition to it. They might have, certainly, but they did not evince it.

Should you think, from your general observation of what passed in Bristol, or do you believe, there was a disposition to assist the magistrates among the householders?—I can say positively there was, *after the private property was attacked in Queen Square.*

Sir J. Scarlett. You are quite right. I quite agree with you.

Witness. I do not say there was not before; but it was quite manifest then.

Before the private property in Queen Square was attacked, there was no disposition manifested to assist the magistrates, but after it was attacked there was?—Not to assist them; for they were not there to be assisted.

But to assist in repelling the violence; do not you judge too much of the magistrates—you do not know where they were exactly?—I do not. I only speak to facts.

Did you see any disposition manifested by any of the inhabitants of Bristol, to assist the magistrates to put down the violence?—I saw no attempt of the kind; no attempt by physical force to put a stop to it.

Now I put the question to you upon your solemn affirmation—I think you affirmed?—Yes.

Upon your solemn affirmation, did you not hear before the private property was attacked expressions of satisfaction from the crowd?—I did while the Mansion-house was burning. I heard cheers in various parts of the crowd while a portion of the buildings were falling in.

The people appeared to be divided into two classes: the one actually riotous and attacking the hoards that were erected for the defence of the windows, being much intoxicated; and the other part of the assemblage, from their dress and bearing, seemed above the common grade of society; but they were laughing and cheering at witnessing the attacks of the others. "I had not," said Mr. Roberts, "an opportunity of witnessing what aid the military rendered, or would have rendered. I was certainly strongly impressed with the apparent apathy that was manifested throughout the whole city while there was such danger staring them in the face."

The news-rooms were quite full, infinitely fuller than the Guildhall, where the inhabitants had been requested to re-assemble at three o'clock. From fifty to one hundred of the better classes met there.

"The mayor, on taking the chair," said Mr. Cooke, "opened the business of the meeting by stating great regret at having to summon his fellow-citizens upon such an occasion; that the mob had been in possession of the city a considerable time; they were then in the act of burning down the Bridewell; they were supplied with weapons, sledge-hammers,

crowbars, and other weapons of that description. It was quite uncertain how soon they might come to the very place where we were then assembled, and destroy that also."

Mr. Cooke then inquired of the mayor what plan he proposed to the meeting. He replied he had none. "I then remarked I thought it a very extraordinary circumstance that he, as the chief magistrate of the city, in whom the preservation of the peace of the city, in a most peculiar manner, was reposed, should suffer the rioters to prevail so long there, and then to call the citizens together, and inform them that he had no plan of operation to submit to their consideration. I think it was at that moment that Mr. Serjeant Ludlow rose, who was sitting immediately under the mayor, and said, 'With your permission I will answer Mr. Cooke.' Mr. Serjeant Ludlow then said, after referring to politics, and making some allusion to topics with which we had nothing to do, that every man must act on his own discretion, and upon his own individual responsibility. This excited some feelings of surprise in my own mind, and in the minds of those gentlemen immediately about me. They quite concurred in opinion with me, that it would be a better plan to go out; and I then stated to the mayor, if he would allow eight or ten of the military, who were then parading up and down the street, to go with us to cover us in case of any attack, as we had no weapons of defence, that we would go out, and see if we could not quell the riot, and get rid of the mob. The mayor replied that he had no power over the military.

"The few scores of gentlemen who met said that they would not risk their lives unless supported by the military, but if supported by the troops they were willing to do so. Colonel Brereton then came and coolly informed them that he had ordered the 14th Light Dragoons out of the city: he stated the distance two miles, and Serjeant Ludlow then said, 'I command you, Sir, in the King's name, to order the 14th Dragoons back again immediately.' He said, 'I will not do so; but I wish to have an interview with the magistrates privately;' and then he retired with Serjeant Ludlow and the magistrates into a private room. On his return in ten

minutes, the town-clerk stated, 'Colonel Brereton has given such reasons to the magistrates for not bringing the Dragoons as they think are sufficient, and I think it would be imprudent in him to do so.'

"Colonel Brereton said, 'He did not think that if they were to return, there would be a man left by the morning.' He added that his own troops, the 3rd Dragoon Guards, were very much fatigued; that they had been on their horses forty-eight hours; and that the horses and men were very tired, and not fit for service."

The report of the high words that passed between Colonel Brereton and Serjeant Ludlow was told by Mr. Bulgin still more vividly. "I heard Mr. Serjeant Ludlow call upon Colonel Brereton in the name of the magistrates to recall the 14th Light Dragoons. 'I charge you with the whole responsibility whatever may happen.' Colonel Brereton replied distinctly, 'I will not.' He said his own men were so fatigued and jaded, the number of the military was so small, and the prejudice that was then entertained against them so great, that if they were brought back into the city he thought they would not be sufficient to meet the mob — that their lives would be sacrificed. He said also, 'Not that I care sacrificing my own life or the lives of my men, if I thought they would be of service; but I am confident they would not; they would only irritate the mob to worse acts, and then I would not answer for the consequences that might take place.'

"Serjeant Ludlow said he would report him at the Horse Guards; and turning round to the gentlemen who were in the hall, addressed them, as nearly as I can recollect, 'Gentlemen, I never have been, I never will be, ashamed to give my opinion fearlessly, when that opinion is wanted. I have been advising with the magistrates yesterday and to-day as to what is best to be done; what that advice is I shall not state here, but that has not been taken.'

"The mayor and magistrates seemed very desirous of hearing and receiving any plan or plans that could be devised by the inhabitants present, but there was nothing determined upon. There was a great deal of confusion in the hall: as much attention was given as could be, but nothing

at all determined. They were confused and distraught with the number of plans suggested, and petitions for aid. The manager of the branch bank of England applied for assistance: 'I was alone in charge of a considerable property, which I apprehended might be endangered by an attack of the mob, and I wished for the protection of the magistrates.' Mr. Sheriff Bengough replied, 'We have no means; you must organise some means yourself;' or some words to that effect, as nearly as I can remember. I expressed my surprise at the departure of the troops at such a time. Alderman Daniel replied that it was thought the irritation would subside, if the two troops of the 14th were withdrawn. He inquired what arms I had. I told him I had two blunderbusses and two pairs of pistols. He said, 'You are better provided than we were at the Mansion-house yesterday.' He recommended me to make no show to invite mischief, or attract the mob, and with that I left the room."

Dr. Lant Carpenter, the Unitarian minister at Bristol, heard no other directions given than the parting advice of the mayor, that it might be well to defend the council-house, and that there were two hundred staves in the house, which gentlemen might take who would go there. At five o'clock on Sunday afternoon, the mayor harangued the few that were then assembled, less than thirty: "Gentlemen, we have come to no decision. I will do any thing you can devise, with the exception of calling in the military: they have rendered themselves obnoxious by firing on the populace contrary to orders, and confident I am that if they were again called in, every one would be sacrificed before the morning. I will do any thing you wish, with the exception of calling in the 14th; but, I am sure, if they were called, every one would be murdered before the morning, and I do not wish to endanger the life of any person: I will do any thing, or go any where with you, gentlemen." The mayor, who had been infected by Col. Brereton with visionary panic and alarm, then left the Guildhall.

This cry of *Sauve qui peut* had been previously raised by Serjeant Ludlow, who complained that there had been much deliberation used during the course of the forenoon, and

nothing conclusive adopted; that it was then an advanced period of the day, close on dusk, and nothing done; and in an hour or less it will be dark, and I think it is now high time to take care of ourselves."

The more active and resolute citizens, with the mayor and town-clerk, then adjourned to the council-house, where news was brought that the bishop's palace had been just attacked. Mr. Wm. Protheroe, with between one hundred and two hundred of the respectable classes, stated to the mayor that it was the wish of the persons below, that he should lead them to the bishop's palace. He assented, and came to the top of the stairs, but then returned with Serjeant Ludlow. Immediately after, Mr. Alderman Camplin presented himself and said, "I will lead you," and the party, reduced to about fifty or sixty, advanced to the palace. It would appear from this representation of a witness for the prosecution, that the mayor had pusillanimously retreated; but there was a suppression of truth in the representation.

The witness was cross-examined with warmth by Sir James Scarlett upon this point. "I beg to ask you this,—Was it not a notorious fact in the town that the mayor did go, and Mr. Serjeant Ludlow and several other gentlemen immediately after you, to the bishop's palace?

Mr. Attorney-General. I object to that.

Lord Tenterden. What is notorious in the town may be easily proved.

"I did not know that till the following day, and then I was told it; but I will swear I did not know it till the following day."

Lord Tenterden. He did not know it then, except as he was told.

Sir James Scarlett. I hope it will be seen by and by, that I have a reason for asking whether it was not notorious. The fact will be proved by and by. I do not expect that admission from my learned friend, after the course the prosecution has taken.

Lord Tenterden. We see the object of it.

They entered the palace, which was for the moment deserted, and captured one of the rioters, and immediately there was a

great commotion and difference of opinion as to what should be done with their captive. He was very near being killed, and a person present came forward and collared the man, and to gain the attention of every one present, said, "Is this man to be killed?" "No, no, no!" "Then for God's sake put down your staves, or you will kill him." The troops rode up to the palace, and for a quarter of an hour sat on their horses tranquil spectators. They then rode off. Had they exerted themselves, they might have suppressed this riot at the palace. "I said to one of the Blues, as we were going in, 'If you will only keep your station, and keep back the mob, we will secure the palace and put out the fire, and secure whatever may remain there.' But they did nothing; at least I saw them do nothing! The small force of citizens also dispersed, partly for want of a leader, and partly in consequence of the military being withdrawn."

To fasten the charge of personal pusillanimity on the mayor, Serjeant William Platts, of the recruiting office, deposed to his appearing much agitated, and inquiring whether there was any mode of escaping backwards. He did effect his escape; and, whilst wandering about to seek a place of refuge for two hours, the rioters, unchecked, fired the Mansion-house, and commenced setting on fire different private houses in Queen Square.

Mr. Edgeworth, the Roman Catholic priest, saw men "making balls, for the purpose of setting fire to the Mansion-house, of tow and pitch, and very significantly holding them up to the people and to the soldiers! I looked on, whilst others broke up the floors with adzes. In about twenty minutes I saw the whole of it in flames. The plunder of the upper rooms appeared to be the work of a few minutes only, and immediately the whole was on fire. Five or six troopers continued to walk their horses up and down in front of the burning building, and when the roof fell in, the mob cheered lustily. Colonel Brereton then arrived, with about eighteen or twenty of the 3rd Dragoon Guards.

What passed?—"He drew them up in front of the Mansion-house, and addressed himself to one of the six or seven of the Dragoon Guards who remained there all the time, who

had been left there before, and asked him how this had come about? why did he permit this? That was the Mansion-house then in flames. The corporal, or serjeant, that is, the individual to whom he addressed himself, said, 'How could we help it, Sir?'

Did he say anything else to them? — "I think those six or seven then joined the main body, and I heard him say to them, I was close to his horse, 'My lads, do not fire.' It was a moment of irritation to them."

He gesticulated to the rioters to leave the place, but finding his remonstrances vain, withdrew with the troop.

Two to three hundred persons then went from house to house, setting them on fire. The flames spread from the Mansion-house, which stood at the corner of Queen Square, to the Custom-house, and all the houses on that side were fired in succession. No magistrate — no civil force — no soldiers interfered.

Mr. Selfe counted upwards of thirty houses burning at one time. "It wanted exactly ten minutes of six on Monday morning when the soldiers again appeared on the scene. There was no more firing after that time."

Had the Chelsea pensioners been called out, even they, it was said, might have sufficed to prevent that awful destruction. About half a dozen of these pensioners had gone to the Council-house on Sunday forenoon, but for want of directions had dispersed. They could find no magistrate. Mr. Ralph deposed, "If I had had five and twenty good men, I would have saved all the west end of the square."

When the troops did charge on the Monday, "the crowd flew as leaves would fly before the wind;" but then many had perished in the flames, many had fallen from intoxication, and many had withdrawn with their plunder.

The relation of these disastrous occurrences by successive witnesses personally interested, and with their feelings still excited, necessarily involved much matter of detail and great repetition. The Chief Justice had daily grown more fidgetty and impatient, till at length his suppressed annoyance could no longer be restrained. Mr. Bush having been sent with a letter by the mayor to Captain Codrington, of Dodington,

was asked by Mr. Shepherd, "I believe you went in a chaise to Dodington, and arrived about half-past two?" Lord Tenterden's latent irritability at the too minute questioning of a thrice-told tale, and fretted by disease, broke out. "What colour was the jacket of the man who drove the chaise? Why do you not ask that?" The witness, anxious to gratify his lordship's curiosity, answered, with great simplicity, "I think it was a yellow one!" This was the last roar of the sick lion. In a few minutes he withdrew, and his place saw him no more!

On Monday, the fourth day of the trial, the Attorney-General read the statement which the mayor had sent to the Secretary of State. He never suspected that he should be consumed in his own robes of office, and also, that his memorial to Lord Hill, inferentially but strongly condemning the vacillation and lukewarmness of Colonel Brereton, should be converted to his own destruction. They were ably written documents, temperate but firm,—the manifestoes of honest magistrates, more sinned against than sinning. From the concluding sentence of that calm and cautious statement few could be found to dissent. "I doubt very much whether the military assistance afforded to us by His Majesty's government was employed as it might have been, and as the pressing exigency of the case required."

Captain William Codrington, living at Dodington, fifteen miles from Bristol, received a note from the mayor on Sunday afternoon, saying, that the city was in a lamentable state, and requesting him to bring his troop as soon as possible. He collected fifty-eight yeomanry, and reached Bristol at a quarter before ten at night, but could not find a magistrate, though he rode up and down with Colonel Brereton to find one. "I then told Colonel Brereton my lieutenant was a county magistrate, and asked why he could not pull off his red coat and read the Riot Act; he was a magistrate for the county of Gloucester. He said, 'Oh no! that will not do.' I said to him, 'They say the mob is collecting in Queen Square. Why do you not take us there?' He said 'Oh! no, Sir, we must not go there. If they are left alone they will be peaceable.' [He still cried 'Peace, peace,' where

there was no peace.] He asked me if I could depend upon my men. I said 'Yes, I am certain I can depend upon every man.' He said, 'You had better caution them on no account to fire.' I told him I had already done so, and that I was certain no man would fire without my command. He then said, 'We will go down to Fisher's livery stables, where it is probable we shall find accommodation.' On arriving there I formed up the troop. I said to a man standing at the door, 'Is there any room here?' He said, 'No, there is not room for half a dozen horses, much less for your troop.' I said, 'This is too bad. I will not be humbugged in this manner any longer.' I consulted my lieutenant, and we agreed we would go back the same way that Colonel Brereton had brought us, thinking that, if any magistrate had been found, we should most probably meet him. We went back, expecting to meet some magistrate, but met none."

The gallant captain then led his troop slowly, but in dudgeon, four miles out of the town to Downend, and, after resting there two hours, went home. It was only on Monday at noon, he received a handsome letter of apology, explaining that no disrepect had been intended, but that the magistrates had been heading a body of their fellow-citizens to a distant part of the city; that billets had been provided at Fisher's livery stables; and giving a gentle rebuke. "If you should determine to come again to Bristol, they beg to suggest your sending on a serjeant, or other non-commissioned officer, to apprise them, in order that billets may be ready on your arrival."

Captain Codrington had clearly been remiss in not sending forward a quarter-master; but he had only commanded twelve months, and he had never been out on service before. It transpired, in cross-examination, that, at the very time when Colonel Brereton said they must not go to Queen Square, the horizon was red in that direction,—that they passed close by the palace then burning, but were not allowed to interfere. "Colonel Brereton said we could be of no use,—that we could do nothing. That if the people were let alone, they would be peaceable."

The re-examination of this officer by the Attorney-General

sought to fasten the responsibility of non-interference and passive inertness on the magistracy.

You have been asked whether you should have acted, if Colonel Brereton had given you an order. I ask you whether you would have acted if the magistrates had given you an order? — Certainly.

After Colonel Brereton had left you, if the magistrates had required you to act, either at the palace or Queen Square, should you have hesitated? — Certainly not.

Before the witness was permitted to quit the box, one of the judges interposed a few questions tending to fix the blame on the right quarter.

Mr. Justice Taunton. I just wish to ask Captain Codrington a question. Will you give me leave to ask you whether, before you withdrew your troop from Bristol, you apprised Colonel Brereton, or the mayor, or any authority, civil or military, of your intention to do so? — No, I saw no authority whatever.

Did you send any message? — No, I did not know where to send any message.

I understood you to say that, upon your return, you passed by the Council-house? — Yes.

Did you stop there, and attempt there to give intimation that you were about to withdraw your troop? — No, we did not stop!

It was very unfortunate, but the remissness there lay with the commanding officer.

Mr. Goss, a private gentleman, related an apparent oversight and omission on the part of the mayor. So late as nine o'clock on Monday morning he inquired of the mayor at the Council-house, whether he had ascertained the quantity of arms in the possession of the gunmakers? His reply was, "No, Sir, indeed I have not; would you have the goodness to ascertain it?"

Mr. Goss then went round to the gunmakers, and collected a list of eight hundred. To his utter amazement he was told by Alderman Daniel, "Mr. Goss, I will tell you what should be done; let the whole of them be thrown into the float." The alderman was a wag, for provision had been made, the day before, for securing the arms.

A fierce onslaught was made on the magistrates by the last witness for the prosecution, a man of war, Major Beckwith. His arrival on the scene of action, however, was owing to the forethought of Mr. Pinney. "I received a request from the mayor of Bristol at two o'clock on Monday morning at Gloucester, and arrived in Bristol about seven." He found the magistrates in the Council chamber "fluttered, like pigeons in a dove-cot. They complained very much of Colonel Brereton not having supported them; they stated that they had no authority whatever; that the mob was in complete possession of the city; they told me that the Riot Act had been repeatedly read. I requested that one or two magistrates would accompany me on horseback, and I promised presently to restore order. They all refused to do so; upon which I put the same question to them individually. They all refused; one stated that it would make him unpopular, another that it would cause his shipping to be destroyed, another his property; in short, they all refused: they also informed me that none of them knew how to ride on horseback, except one gentleman, and they pointed to the tall Mr. Alderman Hillhouse! Mr. Hillhouse said that he had not been on horseback for eighteen years; and he also remarked, that he would hold anybody responsible, who said a second time that he could ride! Upon hearing this, I required a written authority from the magistrates to take the measures that might be expedient towards putting down the riot."

The mayor immediately gave the written authority, but declined accompanying him on horseback. "I am not certain if he named his shipping or his property: he named either the one or the other, saying that it would cause it to be destroyed." The major then proceeded to cheer and encourage Colonel Brereton, who persisted that with so small a force it was impossible to do any thing; but his gallant brother officer thought differently, put on his uniform, and led up his squadron.

A report was shortly afterwards made that the mob had broke into and were plundering the cellars of the bishop's palace; the squadron immediately mounted, and, after a great

number of charges, in about two hours the rioters were put down in every quarter.

Had those charges been made in different parts of the city? — The instant one charge had been made, the troops were rallied, and proceeded to different parts, dispersing the mob wherever they were found.

During those charges was it necessary to destroy any lives? — A great number.

During any part of those charges did you see any magistrate in any part of the city where you had occasion to go to make those charges? — Not one.

When cross-examined by Mr. Campbell, some amusing facts and inferences were elicited.

Did you make some of those charges at a full gallop? — At full speed.

Mr. Campbell. Which it was expected that the magistrates should head! How long were you employed in making those charges? — I should think from about ten o'clock till twelve.

And then the peace of the city was completely restored? — The peace of the city was completely restored.

I suppose you know the mayor by his figure? — Yes.

A little short stature, and deformed hump? — Yes; I may, perhaps, be permitted to say that the mayor was certainly the most collected of the party I saw.

Have not you said that, in your opinion, the mayor had been unjustly blamed? — Immediately after the affair at Bristol, every one said that the whole blame and responsibility rested with the magistrates.

Did not you say that you thought the mayor had been unjustly blamed? — I said he had been blamed to too great an extent.

I only wish to ask you whether you do not recollect soon after saying that the mayor had been unjustly blamed; do you recollect saying so? — I do not; I am certain I did not; but, as I said before, I may very likely have expressed an opinion that the quantity of blame thrown upon the mayor was unjust.

With this partial condemnation of the stern officer, the Attorney-General closed his case for the prosecution.

Sir James Scarlett then addressed the jury with great energy and effect. All his personal, professional, and political feelings were enlisted on behalf of the accused. At variance with the liberal party, from which he had been severed on accepting the office of Attorney-General under the Duke of Wellington, though he had become his first law officer with the approbation of Brookes's Club; irritated and alarmed himself at the passing of the Reform Bill as a revolutionary measure; shrinking from all contact with that giddy monster, the wild and fierce democracy; sympathising strongly with the constituted authorities of the city, *wrongously* accused; triumphant in his anticipation of a verdict, despite the satires and invectives that had been heaped without measure on the heads of the magistracy; eager for victory over the government, and not without a yearning desire to humiliate his learned friend who had displaced him, the great advocate, the thirteenth juryman, as he was popularly termed from his wielding at will the sympathies of the jury-box, girded himself for the encounter, and summoned all his powers of subtle rhetoric, and sly sarcasm, taunt, innuendo, and invective, to disparage the prosecution; at least as earnest upon covering the ministry and political unions with obloquy, as in procuring that verdict of which he felt himself already assured. The prejudices of the Conservative, which had been roused, the sensitive feelings of the gentleman, which had been deeply wounded, the jealousies of forensic strife, all centered in achieving a triumph which should be hailed by the powerful party under whose standard he had enlisted as a political ovation. He was anxious to show the efficacy of his support, and to teach the Whigs a lesson how fatal to themselves had been their quarrel with him. He was becoming an old man; most successful, it is true, but still an advocate merely, not likely soon to taste the sweets of office; and a feeling of disappointment in contrasting his present position with that of others more fortunate, not more able, tinged his address with bitterness, and gave an appearance of acerbity to his manner, from which, highly polished and winning, it was generally free. He began with a measured, almost pathetic, statement of the grievances to which his client had been

exposed, in a tone well calculated to win the sympathies of the gentlemen he addressed.

"The time is at length arrived when the mayor and the magistrates of Bristol have an opportunity afforded them of stating their case, and proving it by evidence. They have suffered much obloquy, much persecution, much misrepresentation. They feel, and they deeply deplore, the calamity that has befallen their city. They cannot deem it otherwise than a great aggravation of that calamity, that they should have been made the subjects of reproach as having occasioned it, and that for a long period. For twelve months since that calamity befel the city of Bristol, they have been the subjects of an investigation,—not by commissioners appointed by his Majesty,—not by the authority of parliament,—but by a private and voluntary committee, appointed amongst their own townsmen, and formed, however respectable the individuals may be who formed it, which I do not doubt, formed chiefly, if not exclusively, of that party in the town which, from their political feelings, as well as religious differences, have been long opposed to the magistracy of Bristol."

He complained of the indignity his clients had been subjected to in a tribunal of their fellow-citizens sitting in judgment upon them—a secret inquisition, and now an information resting on a single vague charge that they did not do their duty. In what particular they failed, what precise duty was expected from them, or omitted by them,—all this they have to learn from the evidence of to-day, having had no intimation, either by the record which you are now trying, or by an opportunity of hearing their accusers face to face, what were the imputations cast upon them.

The jury had heard but half the case yet: it was one of the most important cases that ever was brought before this great tribunal, one in which the magistracy and the gentry of England had a deep and an important interest. "For I will venture to say, that if Mr. Pinney, the mayor of Bristol, could, by possibility, be convicted by your verdict upon the evidence you have already heard, or upon the topics that the Attorney-General has laid before you, there would be no safety for any magistrate in the kingdom; no honesty in the

discharge of his duty, no zeal, no integrity, could save him from the malice and the vengeance of his enemies."

Before filling up those parts of the case which the Attorney-General had left imperfect, and not opposing but reinforcing many of those statements that his witnesses had made, he would draw their attention to two or three topics in the speech itself. They would prove that, whilst a great many of the facts which he had stated had been already explained, or contradicted, and refuted, the weakness of his learned friend's evidence had not been supplied by the strength of his argument. "He says that the magistrates are invested by law with an authority of compelling every man within the sound of their voice to take up arms if it be necessary. Now, Gentlemen, do not let us be caught by words. It is not true, that if a man refuses to come he is therefore liable to immediate coercion. If, indeed, the law could invest the magistrate with the force of a giant, with the hundred arms as well as the strength of Briareus, so that he might, in his own person, compel immediate assistance, my learned friend would be right. But all that the law does is to make the party who refuses to aid the magistrate liable to an indictment, and upon the trial of that indictment and his conviction, his punishment must depend. That is the sole process of compulsion. I should be glad to know whether that power which the law gives, and which can only be enforced by the administration of the law, would enable a magistrate to call upon the population of a town that is determined to resist him, and to make them at a moment, whether they will or not, come to his aid. There is no law that can overcome the law of nature, which disables a magistrate, by any personal force that he possesses, from compelling men to assist him whether they will or not.'

"Another proposition is this: he says, 'the law requires every individual magistrate, under such circumstances, to act with vigour, and decision, and resolution, for the protection of the peace; and in case of any small excess of power, covered by his own good intentions at the time, he need not be afraid of any severe consequences, either of a civil or criminal nature.

"The good intentions of a magistrate, his honesty, his zeal, may excuse him in case he commits an excess of severity, and sheds blood unnecessarily. If the magistrates have good intentions, if they wish to avoid shedding blood, and if they err, not in an excess of severity, but an excess of lenity, my learned friend is not the man to say that they could be excused from any severe consequences of a civil or criminal nature. There is no corrupt intention assigned, no improper motive imputed. Have I not a right to say, that if they have erred, which I do not admit; — have I not a right to say, that if they formed a mistaken judgment; — have I not a right to say, that if they mistook the disposition of the town of Bristol, it was, at least, an innocent misconception that they could not obtain the civil aid of their fellow-citizens to assist in quelling the riots; — have I not a right to say, that they are also entitled to a little consideration, and to be protected from any severe consequences of a criminal nature? My learned friend has not thought proper to give you that part of the alternative. We are to take the law, therefore, to be this, — that when an excess of severity takes place, accompanied with good intentions, the magistrate may be excused; but where error is committed on the side of lenity, though with equally good intentions, whilst my learned friend administers the law, he is not to be excused. . .

"Gentlemen, what is the result of the whole evidence you have been hearing for several days? Do me the favour to consider that you are now sitting calmly, free from all fear, from all alarm, from all agitation, to deliberate upon what was proper to be done in the midst of tumult that might have alarmed any man; in the midst of agitations and violence that might have disturbed the coolest judgment. Perhaps you may be of opinion, that if a few lives had been sacrificed upon the Saturday, — that if blood had been spilt, the town of Bristol might have been saved; — you may be of that opinion; it is but a conjecture. But suppose you are right; — are you ready on that account to condemn the magistrates when they acted under the assurance of an officer of His Majesty, that he would undertake for the safety of the town without using that dreadful expedient?

"More than that, Gentlemen, does any honest man believe that if the magistrates, upon the evidence of my learned friend, had done that which he says was their duty, and had spilt blood upon the Saturday, and saved Bristol; does any man doubt but that they would have been indicted for murder, and that the government would not have defended them? If a magistrate had said, 'Sir, I do not ask you to be responsible, I will be responsible myself, I order you to fire;'— can any man doubt that if a magistrate had done that, and a life had been taken away by it, though the city had been saved, the magistrate would have been justly indicted for murder? Would his good intentions have excused him then? I think they ought, but I have great doubts whether they would in these times. . . . .

"The whole of the evidence may be summed up in two sentences: that all the efforts of the magistrates to induce Colonel Brereton to use the military for the purpose of repressing that riot were ineffectual; and that in consequence of the military refusing to assist in the suppressing of these riots, the civil force of Bristol also refused to aid the magistrates. I should be glad to know what they were to do? On the one hand they were deserted by the military, and on the other hand they were deserted by their fellow-citizens. That is the general state of the case; and they are now called upon to be responsible for the burning of the town. And then, by a number of negatives which my learned friends labour to string together, they think to make an affirmative. Witness after witness is put in the box, and asked 'Did you go to the Council-house? Had you any directions? Did you go to the Guildhall? Had you any directions?' So that if a man goes to the Council-house or the Guildhall, and has no directions from a magistrate, the magistrate must needs be guilty. They do not think fit to call them, who can explain every thing, but they take the case of the magistrates and divide it into tatters. With respect to the mayor, they first show him here, then show him there, then they do not show him anywhere, but leave you to infer, from the defect of their evidence, that according to the opinion of the last witness but one, Mr. Goss, and the

pretended universal report, he was out of Bristol during the Sunday night. Silly and false stories are interspersed to cast odium upon him. As to the tale about the arms, the number and quantity were ascertained; but the magistrates did not choose to tell every body, either the description, the quantity, or the place of deposit. Upon that very Monday the arms were sent away, not to the float, but to the gaol. When the possession of the gaol was recovered by Major Mackworth, the arms were there secured. Why should they tell Mr. Goss? Why should every speech-making gentleman, that goes for the purpose of bullying the magistrates, be informed where they deposited the arms, or where they intended to deposit them.

"Again, you are told that the magistrates did not form a plan. So that when the military had deserted them, it was inherent in the very office of a magistrate, — he was bound by law, to be possessed of the knowledge of an engineer, and by a sort of magic to perceive in himself an innate skill and cunning to defend a town, and to arrange and organise the population in half an hour, so as to secure it from conflagration! Why, if the magistrates were a little taken aback upon that desertion, — if, with an unwilling population, they did not know how to proceed, — if, when they summoned together the whole population, only two hundred came, — if, when those two hundred came, they refused to act without the military, — and if, when they bade them adjourn and bring more of their neighbours, a smaller number still came; — if all these things happened to them, and still they were not able to devise a plan for defending the town, perhaps you will think that the crime is not, at least in a moral point of view, of any great magnitude.

"A respectable Dissenting minister, Mr. Roberts, expressed his amazement at the infatuated apathy of the inhabitants of Bristol when their town was about to be burnt under their eyes. The perverted report in the 'Times' gives his answer thus: — 'I had a strong impression of the dangerous consequences of the infatuated apathy of the *civic authorities*.' Mr. Roberts was the minister of a dissenting congregation, a gentleman of great respectability; but I

must observe, and I call it to your attention, that the greater part of the witnesses examined have been either Catholics or Dissenters from the Church of England. I do not mean on that account to impugn their respectability, but you may easily conceive that in the local political differences of a great corporate town, the party that support the civil authorities in general will not consist of that description of persons."

Sir James Scarlett proceeded to make acute and caustic criticisms on the evidence of Mr. Edgeworth, the Roman Catholic priest, and Townsend. "Mr. Edgeworth on the Monday made an offer to the magistrates that he could raise them two hundred men. Why did he not offer that aid upon the Sunday? Sunday was the critical day. What signify his two hundred Irish Catholics at that time? Very good men, I dare say; they would have been important on the Sunday; yet that witness, who, as I say, has given his evidence with an unction—by which I mean that he has given his evidence clearly prejudiced against the magistrates,—does not profess to tell you why he did not make the proposition on the Sunday.

"To be sure, only a few persons were engaged in the actual work of destruction; you do not require one thousand men to set a house on fire or to plunder it; but if a thousand men look on and support twenty whilst they make the plunder, then you require a force equal to remove one thousand men.

"There was not a word of truth in Townsend's story, on which they were to infer that the mayor made a ridiculous escape. He would be flatly contradicted. What say you to the ingenious plan of another witness, Mr. Waring, the correspondent of the Attorney-General! I do not mean to say any thing against him. I know that the Quakers are exceedingly cautious in giving their evidence; so much so, that I hardly ever, in cross-examination, got a direct answer from any of them. It is no disparagement, but the fact is so; men have peculiar habits, and as part of a Quaker's religion is not to take off his hat, so another part is that when he is cross-examined he does not give an immediate and direct

answer; that is owing to great deliberation. The tardy, reluctant admission extorted from him was that he recommended that an effigy should be burned of Sir C. Wetherell. Now think of a grave Quaker coming to make the proposition that, to quell the mob, the magistrates of Bristol should burn their own Recorder in effigy! I must own that I should have thought the magistrates the most contemptible and wretched of mankind if they could have ventured to stoop to burn the Recorder in effigy, in order to quell the mob. I presume, if the Recorder had been actually in the town, the Quaker might have gone a step further. It is said that in a certain place where mobs govern, that is to say, in Constantinople—for no country is free where the mob governs—sometimes the Grand Seignior is obliged to chuck out the chief minister to the mob, to appease them; and if the Recorder himself had been at Bristol, Mr. Waring might probably have suggested, 'Surely, gentlemen, you cannot do better than to throw the Recorder out amongst them,—that will amuse them, and when they get hold of him they will be entirely contented and satisfied; they will pull him to pieces in fine style, and then you will have appeased all the tumultuous vengeance of the reformers against Sir Charles Wetherell.'"

The skilful advocate then proceeded to express his surprise at no allusion being made by the Attorney-General to the state of Bristol at the time. "I heard his speech; it was a speech of great eloquence and impression, and calculated, till met and contradicted by his evidence, to produce a great impression against the defendant. In the Attorney-General's speech there is not the least allusion to the excited state of Bristol at the time. The magistrates do not complain, and never did complain, that they had not sufficient aid of military force. I make no doubt that they had as much as could be conveniently spared; for the military were in requisition in various parts of the kingdom. Neither am I instructed to insinuate that Colonel Brereton, if he committed any error in judgment, is on that account to be condemned. That gentleman acted under a fearful responsibility; I have no doubt that he was under the impression that if he

had caused a man to be put to death, expecting as he did that the town would be secured without that calamity, he must have felt that he acted under responsibility which, in these times, would be fearful indeed; and therefore I would not be too harsh in blaming him."

"But he bowed before the spirit of reform, and yielded to that crisis of agitation which shook the country. But this I think must be conceded to me, that the state of excitement in the country generally on that great cause of reform had very nearly brought this government, I mean the monarchy, to dissolution, and sapped the foundations of civil society in this country.

"It was natural that the numerical mass of the nation, with whom the measure was undoubtedly of the greatest popularity, should feel a hostility to those classes in which they found their only opponents. It was thought expedient to use all means in their power for the purpose of exciting the feelings of the people, I am sorry to say, against these very classes, and thus to operate on parliament. On that account magistrates were defamed; libels were published, without number or check, against almost every person that had wealth or rank in the country; a system of persecution against them was adopted, and in most places a matrix was industriously formed for those seeds of turbulence and discontent, which flourish in a very high degree even without the aid of cultivation.

"The part taken by Sir Charles Wetherell in parliament, which is the alleged cause of the immediate riots at Bristol, involved him not only as an opponent of the measure, but as an advocate of corporations; and corporations were a subject of attack—all the corporations in the kingdom were the subject of attack. Yet he must hold the assize. There were sixteen prisoners in the gaol, all of them detained for capital offences; his presence, therefore, was necessary."

Sir James Scarlett then detailed all the measures of precaution which the mayor and magistrates had adopted;—their deputation to London, their interview with Lord Melbourne, their addresses, swearing in constables, and prudent measures to allay the storm on the Recorder's arrival, their

reading the Riot Act and directing the military to act on the Saturday.

"Gentlemen, at this period are you ready to say that the magistrates were guilty of any crime? It is not from the record, but from the speech of the Attorney-General, and from the evidence, that I collect what the charge is; he says, 'it was their duty to order the soldiers to fire, and not to throw the responsibility upon them.' I beg to tell my learned friend that I think no man in England would entertain that opinion. When the military officer had given his opinion, and undertaken to secure the peace of the town, and that the mob should disperse; if the magistrates had ordered him to fire they would have been guilty of murder; and Colonel Brereton, if he had fired, would perhaps have been guilty of murder also; because if he was of opinion the thing was not necessary, he was not bound to obey the orders of the magistrates. But he undertook that the town should not be exposed to disturbance; and if he had fired, or the magistrates had ordered him to fire, and death had ensued, they would have been guilty of murder; and sure I am that, with the then feeling in Bristol, and the feeling throughout the country, they would not have been protected. I do not think that innocence of intention would have saved them from prosecution, or from being removed from their situations as magistrates.

"The mayor ordered hand-bills to be circulated, stating the absence of Sir Charles Wetherell; here is one of them: they were printed that night; it is in these terms:—

"'Mansion-house, October 30th, 1831.

"'It is with feelings of the deepest regret, that the Magistrates deem it their duty to call for the immediate aid and co-operation of their fellow-citizens, to allay the great state of excitement now disturbing the inhabitants.

"'The delivery of the gaol has been abandoned, and Sir Charles Wetherell, the Recorder, left the city for London last night.

"'CHAS. PINNEY, Mayor.'

This was dated from the Mansion-house: it was agreed that Sir Charles Wetherell's going away should be published early

on the following day, and this was distributed about the town—'Sir Charles Wetherell left Bristol at twelve o'clock last night.' They then issued what has been read already—'The Magistrates most earnestly entreat the assistance of their fellow-citizens to restore the peace of the city by assembling immediately at the Guildhall.—Sunday morning, half-past ten o'clock.' Only one person has been yet called who got this notice; for my learned friend, though he has called witnesses from Baptists' chapels, and Dissenting chapels, and from Lady Huntingdon's chapels, and Quakers' chapels, has only called one churchwarden. This was the notice that was distributed at each of the churches:—

"'The Magistrates feel it their duty earnestly to request that you will adopt immediate measures to assemble your parishioners in your church, in order that they may be formed into a constabulary force in aid of the civil power, for the protection of the city and its inhabitants, and as you form, to proceed to the Guildhall immediately.

"'C. PINNEY, Mayor.'

"I presume that one of the charges against the mayor is, that he did not order the use of fire-arms. My learned friend will excuse me for making these presumptions; I do not find any thing specific upon the record; I only collect the charges from the evidence. The better opinion has always been, that it is a most dangerous thing to attempt to quell a mob by fire-arms in the hands of persons not acquainted with the use of them, or accustomed to act together. In a case of extreme necessity, you may be excused for resorting to them; and if I saw Westminster Hall on fire, and Westminster Abbey plundered, if I could turn one of the cannon in the park against the plunderers, I own I should not wait for the order of a magistrate; and that I should hope to be excused, although I spilt some patriots' blood in saving them; but I am not to be hanged, drawn, and quartered for not doing it. But that would be nothing compared to putting fire-arms into the hands of an undisciplined rabble. Have the prosecutors brought forward this charge without inquiring of other parishes what effect that

notice produced? Is it credible? Is a prosecution by the Attorney-General brought into this place against the magistrates, whose protection ought to be the object of every wise government,—is it a part of his case to impute crimes to them, and make general charges without laying before you the history of any inquiries he has made in other parishes, to know what other people were willing to do?

"The citizens would not act, and the troops would not. Colonel Brereton thought the 14th Light Dragoons would be sacrificed. The 3rd Dragoons had learnt their lesson; they had taken their degree at Paris; and he doubted whether he could compel them to fire if he ordered it. How did he know, in this state of things, if the 14th Dragoons came in, that the citizens had not also taken their lesson in that university, and were ready to sacrifice them? He thought they had, because it is proved over and over again, that he stated his firm opinion that they would be sacrificed, every man, if they returned to the town.

"My learned friend's case turns upon this great sophistry, as if the magistrates were to make them a plan to operate with—but what signifies a plan without the materials to work upon? The magistrates had already stated the plan they meant to adopt—'Come with your men formed to the Guildhall.' That was not done. Can you suggest any better means by which they could invite persons to come forward to aid them? Can you tell how they could make the inhabitants come forward, and disregard all private motives, all local prejudices, and all personal danger to save the town? No; at that time nobody speculated upon any danger to property, except to the Mansion-house and the corporation property.

"The mayor retired on the second day for half an hour's repose. Only think of that short dedication to necessary repose being tortured into a crime. The only specific charge in this information is that he absented himself from his post; so that a magistrate is to go without food and sleep while a mob is raging, however long, in the town! It was about one o'clock that the magistrates received intimation that the mob were going to the Bridewell; Mr. Burges immediately

went over to the mayor, who had not been in bed any part of the time; he went into the room and found the little man with his coat off, and apparently in the act of shaving. He put on his coat immediately, and went back again to the Guildhall."

One scarcely recognises the propriety of Sir James Scarlett treating Mr. Pinney so contemptuously. He might think that the lower his client should bow the head, the more lightly would the storm pass over.

"A singular charge is brought, that Mr. Cooke, a solicitor of Bristol, could not prevail on the magistrates to employ the military. Mr. Cooke ought to have known all the law which the Attorney-General has been giving you, and a little more too, but he will not assist the magistrates if they will not give him that which they have not the power to give, namely, the military aid! Is not that conclusive evidence in the cause? Here is a respectable man and his fifty friends, who will not give any aid without the military, which they could not have. The magistrates cannot sow dragons' teeth in a moment, and let them grow up and use them to fight. Mr. Cooke could not have his military men, and the magistrates shall not have the civil men. Does my learned friend mean to say that they ought to have gone out themselves? 'Yes,' says the Attorney-General, 'if ten men would go with them, they ought to go out.' I say that they ought not, if, by going out, there is every probability of those ten men and themselves being sacrificed. But the magistrates *did* go. The mayor himself did not go to the gaol; he is not a very good man to see in a crowd when he walks; and it is one of his crimes if he never mounted a horse in his life; he did not know it was a crime before; he did not go with them, but two other magistrates did go to the gaol. After that effort was made, there was a respite for a short time.

"When there came a report of the palace being on fire, the mayor said, 'We will go with you,' and returned up stairs, I believe, for his hat, or some other momentary purpose. Only think, Gentlemen, of the evidence which has been given upon that subject. The prosecutors know that the mayor *did* go, and they leave it to you to imagine and receive an impression,

as if he had skulked away. I will prove some extraordinary facts upon this part of the case. The military were in the yard; and in one or two instances, when one of the bishop's own servants had taken hold of a man who was plundering the property, a soldier forced him to let go his prize. He then took hold of a second man, who had got some of his master's plate; he told the soldier, 'It is my master's plate.' 'Let him go,' said the soldier, 'or I will cut you down with my sabre.' That was the use the 3rd Dragoons made of their force; they had taken their degree in the University of Paris; and I do not attempt to conceal from you, that the persons who went to suppress the mob were as much afraid of the soldiers as they were of the mob. Such is the consequence of giving useful lessons to the soldiery.

"The yeomanry troop came and went. Mr. Fisher was actually lighting up the stalls with candles at the time that he was informed that Colonel Brereton had told Captain Codrington he might go away with his troops. Is the mayor to blame for that? Did he not provide quarters and send billets? But my learned friend said, 'He ought to have been there himself.' If he had been out of bed five nights, what signifies it to the tender-hearted Attorney-General? He ought to have gone with them—he is bound, *ex officio*, to ride like a cavalier, and he ought to have headed the corps. I deny the position *in toto*, and I deny the law.

"A word about Major Beckwith, whose conversation is repeated to criminate my client. I must ask whether it is a crime, if a military man goes to a magistrate and says, 'I am ready to suppress the riot, will you ride with me?' 'No; I cannot.' 'Will you give me a letter?' 'Yes, with pleasure.' Is the magistrate indictable for not riding? Do not let us try this case by making a sort of *omnium gatherum* of the whole information; let us come to precise points, and I say that no man of common candour, or that has any knowledge of the law, can for a moment pretend that a man is to be indicted because he refuses to ride with the military. If the military officer is content to act upon the authority of the mayor, he gives him that which is sufficient."

After citing the specific charges against the Lord Mayor

of London, Sir James Scarlett asked, "What is the situation in which the present Mayor of Bristol is placed? Here is a charge of forty-eight hours;—the town was under riot and confusion, and the gaol, Bridewell, and palace were burned, and a variety of houses in the Square; and there is no particular thing charged which he was called upon to do. It is not charged that he was called upon to go to the palace, or to read the Riot Act, and that he refused. He is called upon to defend himself against a variety of charges which the Attorney-General may make in his reply, and this is to be the result of this ingenious mode of preparing an information, that it is just possible to get a verdict without any concurrence of opinion in any two jurymen, and I will tell how. We begin at eight o'clock on the Saturday morning, when they sally out to meet the Recorder, and we do not close till Monday; that is a period of about forty-eight hours; it embraces the whole of Saturday, the whole of Sunday, and Sunday night. I will suppose that any one gentleman amongst you should be of opinion that upon such a particular event the mayor did not do quite right, but that the eleven others do not agree with him; and that another should be of opinion that in another particular he did not do right, no one agrees with him; and there may be twelve different opinions upon twelve different subjects; upon which twelve separate individuals may form a notion that the mayor did not do quite right, though there are not twelve who concur in that opinion as to any one act; and the Attorney-General, by that sort of net, hopes to catch a verdict. But I hope your good sense and justice will prevent it; I hope you will think, one and all, that there is no one point upon which the mayor can be justly impugned; but I do think, and I distinctly complain of it, that this is the hardest prosecution that ever was instituted for the purpose of running down and degrading the magistracy. This general charge is made to cover forty-six or forty-eight different events, without any intimation being given as to what particular charge it was intended to urge; and if ever there was a net made to catch innocence—if ever the proceedings of a court of justice were calculated and arranged to catch men not guilty, this is an

expedient to do it. I should have expected, in common candour, as an inquiry had been going forward, conducted by the enemies of the magistrates, and as they had no opportunity of knowing upon what particular point the charge was intended to be pressed, I should have expected, when they came to see the information, they would have found a specific matter in the shape of a charge, whereas all that you find is nothing but a statement that for forty-eight hours they did not do their duty.

"I want to know where does my learned friend mean to put his finger when he comes to his reply, which will be able and powerful, no doubt; but you will not be satisfied unless he lays his hand upon some particular point, and satisfies you that their guilt took place. Is it because the mayor did not call upon the military to fire?—he has stated it, but he could not mean to maintain it. He could not call out the *posse comitatus* in the night; that force is not to be moved so easily as my learned friend supposes, nor is it to be moved more than the mayor could move the constables. The sheriff is authorised to call upon every man to aid him; and if he does not choose to do so, the king can only indict him; the sheriff cannot flog him, and force him to do it. The magistrates *had* arranged with the sheriffs, and called upon them to aid them when they met on Sunday. When you find that the constables could not be found, and the inhabitants would not join them, I leave it to your candour to say whether you can find this gentleman guilty. Can you suppose that the magistrates of Bristol had not the greatest interest in protecting the safety of their town? As corporators their property was in danger,—they are the greatest sufferers at all events;—but whatever your judgment is, they will have this self-gratulation, that they never did by word or deed excite these rioters. If the property of the corporation was sacrificed and condemned to the flames, and the inhabitants were content to witness it with shouts of applause, it was not the mayor and magistrates that published declamations against corporations and against authorities. They are not guilty of any endeavour to decry the magistrates, and to alienate the minds of the people from those whom the law has invested

with power. If the Custom-house and Excise-office were burnt, and the population of Bristol exulted in the conflagration as in a triumph obtained over *tax-eaters*, the corporation of Bristol never, by act, word, or deed, to their knowledge, took any means to inflame the minds of the people against the national creditor, and to treat those who live upon the interest of the public funds, as public malefactors. They had never declaimed against taxes; they had never declared that no government could be good that would support taxes; they had never taken that part which, unhappily, many, many of their townspeople, not the respectable part, I hope, but many had taken; they had not said that they would not pay the taxes unless they had measures of their own; no meeting was held at Bristol, where a magistrate declared that the people should not pay taxes unless a particular measure was carried. If the bishop felt, and amongst the individuals composing that pious and reverend body, he is one of the most respectable and amiable, — if he had the mortification to feel, that amongst the population of Bristol, a considerable multitude derived satisfaction from pulling down and burning his palace, at least the magistrates were no parties to that excitement; no, Gentlemen, they did not advise the bishops to 'put their houses in order.' Do not charge upon them, for God's sake, the result, the necessary, I cannot call it the innocent, but the unintentional result of that agitation, those speeches, and those declamations, and those perpetual firings from the press, that excited the people of England to think that their bishops were interested oppressors, that their magistrates were tyrants, and deserved to be crucified, and that every institution of the country ought to be suspended to carry a favorite measure.

"This was the state of Bristol! What could these ten magistrates do to resist it? All I ask is, that they shall not be made the victims of that excitement. I condemn nobody, — I blame nobody; but I declare to God that if it were possible to conceive the magistrates of Bristol would be convicted, upon this evidence, of any defect of duty or any abandonment of their posts to prevent what has taken place,

I declare before God and heaven that this country would no longer be the land of liberty.

"Gentlemen, I beg pardon for having troubled you so long. I felt the great importance of the trust committed to my charge, and I thought it my duty fearlessly to defend the magistrates; I feel they have been persecuted where they ought to have been protected; they have done their duty, and exposed to peril their wives and families, and their fortunes and their lives. Their reward is that they are sacrificed to some sentiment prevailing in their town, that it is time to put down the corporation of Bristol.

"Gentlemen, this is the first step towards that end; there are nine other informations to be tried after you have disposed of this. I trouble you no longer; but, with their lordships' permission, to-morrow you shall hear the evidence I have to offer; and I do assure you most honestly that I shall be surprised if it does not go much beyond the statement I have made to you."

The evidence of Mr. Hare, the sheriff, Mr. Burges, the city solicitor, and Serjeant Ludlow, the town-clerk, gave a clear, complete, and exculpatory narrative of the proceedings of the mayor and magistrates till the afternoon of Sunday. Apprehensive of tumult on Sir Charles Wetherell's coming to hold the gaol delivery, they sought an interview with Lord Melbourne to consult him, as Home Secretary, about the expediency of postponing it. With his usual sound good sense, Lord Melbourne expressed a clear opinion that the assizes ought to be held; that a contrary course would be improperly succumbing to the popular feeling. He promised that troops should be sent on condition they were not to be used, except on the last extremity. He gave shrewd advice that they should not be sent into the city, and that they should not be seen except when called upon to act; a course pronounced by military men to be the most wise and judicious.

Upon the mob assailing the Mansion-house, the mayor went out in his full costume, which he had had no opportunity during the whole day of changing, and addressed them upon the impropriety of their conduct, entreating them to disperse; and when he saw, as he did, great numbers of

decent-looking persons assembled, and appearing to cheer the mob, he implored them to disperse; and said that he should be exceedingly sorry to take any measures of force, but that he should be obliged to do that, unless they would disperse immediately. He could not, however, prevail upon them, and the military were sent for. The mayor went down and received Colonel Brereton at the risk of his life. "I, perhaps, may anticipate here," said Sheriff Hare, "and say at once, through the whole time I was constantly with the mayor, I never saw the slightest instance of personal shrinking. The only instance of hesitation at all, that I saw, was when Captain Gage suggested the necessity of firing upon the people in a particular direction; there then appeared to be, for some seconds, a sort of struggle: he then said, 'They must be fired on if they will not disperse.'"

The testimony of Mr. Burges to his demeanour was equally emphatic. "He had always great self-possession, and was always ready to attend and listen to every proposition made to him, and give his best assistance. I was with him the whole time, with the exception of the few hours I was engaged in removing the deeds from the Council-house; it was impossible for any man to conduct himself with more propriety and firmness than the mayor did, utterly impossible."

Serjeant Ludlow was equally decisive. "I think the mayor, during the whole of the time, showed the most earnest desire to do his duty to the best of his ability; and that he never balanced his personal safety for one moment against it; he never took into consideration for a moment what might happen to him, if he was in the performance of his duty. I informed him as well as I could, and he paid every attention to it. I think he would have gone any where, if I had told him it was his duty to do so. When the mayor asked me what he was to do in the situation he was placed in, I gave him the best information I could, and I firmly believe he would have done what I recommended: if he did any thing wrong during the day, I think I am more to blame for it than the mayor himself."

This manly and straightforward testimony of Serjeant Ludlow was confirmed, so far as his opinion could require

confirmation, by the judgment of a brave soldier, Major Digby Mackworth. "The mayor, though his life was in imminent danger, would not quit the Mansion-house, saying, 'I think I ought to stay here.' I said, as a soldier, I could assure him it was right for him to go it was even his duty! Upon that he agreed to leave the Mansion-house, but seemed as cool as ever I saw any man, and, I may add, perhaps not untruly, the most cool of the party."

They escaped through a window on the landing-place: there were no women there. Major Mackworth assisted the mayor in climbing the roof, and they then escaped over the leads. After effecting his escape, he proceeded forthwith to the Guildhall, and continued there dictating letters and expresses, and consulting. Mr. Burges, at noon on Sunday, addressed him, and said, "Mr. Mayor, you have gone through a great deal of fatigue, you do not know how soon you may be called again into active service, and I should strongly recommend you to obtain a little repose, if you can. He would not admit that he was at all exhausted, but he appeared to me," Mr. Burges added, "to be so, and I said, 'I hope the magistrates will insist upon your withdrawing for a short time.'"

They did insist. A room was procured for him at the White Lion, an inn opposite, and he stayed there an hour. There came in then some report that an attack upon Bridewell was threatened, and the mayor being sent for, was found in the act of shaving. He followed instantly, not having found time to change any part of his dress.

In the afternoon, after presiding at the meetings at the Guildhall and Council, the mayor went to Colonel Brereton in consequence of a report that the shipping and the banks were to be attacked; and, further, to urge him to lead up such military assistance as he had. It was raining very hard, and the party, consisting of the mayor, Mr. Fripp, and Mr. Burges, were glad to partake of some bread and cheese, with which the colonel supplied them.

No personal alarm was shown, or could be, for all was at that time quiet, and there was nothing to occasion it. They returned to the Council-house, where word was brought of the attack on the bishop's palace. The mayor returned from

the head of the stairs for a few moments, for his hat it was surmised, and then returned with about twenty-five persons. The numbers fell off on the way, and all access to the palace being blocked up, the little party took refuge in the Recruiting Office, whence they could look on the bishop's residence.

The soldiers surrounded the building, and one of the serjeants showed the people hemmed in by the military from the windows of Colonel Brereton's office. "They are caught like a rat in a trap," he said. But he was totally mistaken. In a few minutes the soldiers withdrew, the magistrates were exposed in the office, and their natural apprehension was that their lives would be sacrificed. The special constables outside expressed themselves in strong language upon the subject, and said, "That they had been in action at the palace as constables, and had been deserted by the military. It was the second time," they said, "our lives had been in danger, and we will now give it up," or "we will have nothing more to do with it," or some expression to the same effect.

The fatal hiatus, the lost interregnum of time, seems to have been between this period and midnight, when the mayor, in his extremity and desperation, sent a peremptory order to act:—

"The Mayor of Bristol desires Colonel Brereton to consider himself fully authorised to take whatever steps, and give whatever orders, he, as the military commander of the troops in this city, may think fit to restore and preserve, as far as possible, the public peace. The Riot Act has been read three times to-day. Colonel Brereton will have the goodness to consider this order to apply not only to the troops at present under his command, but to any which may subsequently arrive in the city.

"Mr. Daniel Fripps,
"No. 30, Berkeley Square,
"Sunday night, 12 o'clock, 30th October, 1831.

"This communication is made to Colonel Brereton, in consequence of Lieutenant Macclesfield calling at the Council-house and requesting to see a magistrate. Colonel Brereton was gone out when a call was made at the staff station to inform him as above."

The mayor was up all Sunday night, and appeared at the Council-house at six o'clock on Monday morning in his dress

of Saturday, silk stockings and buckles. In strong contrast with this vindication of the mayor's personal demeanour, was the startling testimony of Colonel Brereton's torpidity and inaction. Serjeant Ludlow gave the most decisive evidence inculpating Colonel Brereton. On the Saturday evening they began to complain bitterly of his lukewarmness. "Two soldiers of the 14th Dragoons were brought in bleeding, one of them very severely. A constable had been brought in a short time before senseless. I remember saying to Colonel Brereton, 'Do you think that these are symptoms of good humour on the part of the mob? I think it will be necessary to use some greater degree of force than has hitherto been used?'" His answer being evasive, the serjeant added, "I must beg the favour of knowing whether you have any orders from the Secretary of State or the Horse Guards, that prevent you from obeying the orders of the magistrates? because, if so, it will materially affect their arrangements." He said, "My directions are to obey the orders of the magistrates."

"On Sunday forenoon the mayor was sitting at the head of the table, and the magistrates around him writing letters, some doing one thing and some another, when Colonel Brereton came into the Guildhall, and said, 'I want permission to send the 14th Dragoons out of the town.' I started up rather intemperately, or rather with surprise, and probably made some exclamation. He said, 'They have killed a man in the night; the people are so exasperated; they must not stay in the town.' He said, 'I want the magistrates' authority to send them away.' I said, 'You cannot have that authority, sir; it is impossible!' He said, 'If you will believe me, the situation of the troops is such they cannot act; they must have some rest; and the most judicious thing is to think of some quarters at no great distance from the town, where they can go and refresh themselves;' and I recollect, in the course of the discussion, several places were mentioned; and during that discussion and mentioning of places, the magistrates said, 'We will not embarrass you if we cannot assist you. We will point out any place we think proper; but you must recollect we do not take any responsibility upon ourselves.'"

The learned serjeant was so full of his theme and so over-

flowing with information, that even the practised ability of Sir J. Scarlett could not keep him to the point. He would anticipate the question, and run ahead of his interrogator. Thus, when asked when any offer had been made to Colonel Brereton to furnish him with other horses, he answered, "My difficulty is from not knowing the precise time."

Never mind the time; we will stick to the subject. Was any suggestion made to him about horses? — I do not recollect the time when that was said to him about sending for horses.

Do you recollect any proposition made to him as to obtaining fresh horses? — Yes, several times in the course of the day; but I cannot recollect the time.

We will forget the time. There was a proposition made. Do you remember using the expression, "It is high time to take care of ourselves?" — I do not recollect using it, but I have no doubt that I did use it, as Mr. Roberts has stated it, who is a respectable man; but I used it, meaning thereby that it would be best to determine upon a local spot at which the magistrates could best make a stand, and that, as Mr. Roberts tells me, was the impression upon his mind of the meaning, and that it was communicated by him to the gentlemen who took his examination.

Mr. Attorney-General. That is a very irregular statement.

Witness. I do not know that it is irregular.

Mr. Attorney-General. Then I must appeal to the court.

Mr. Justice Parke. It is very irregular.

Witness. I am very sorry.

The witness went on to explain "that all sorts of wild reports were brought of the mob going to fire the ships in the docks; but, though many brought flying rumours, none brought aid." He continued answering in the following discursive strain: —

You left the mayor and magistrates at Colonel Brereton's? — Yes; and at Mr. Osborne's I found Mr. Alderman Daniel, where I had a mutton chop and a glass of wine and water.

I am very glad you had that refreshment; but did you go to Colonel Brereton's? — Yes.

When cross-examined by the Attorney-General, the expansive genius of the excitable witness knew no bounds.

If you will lead me to anything I will answer you.

I do not know anything; it is not for me to lead you. — If you will try, I should be glad; for I should be sorry to leave the box with any mistaken impression on the part of any one.

You will never leave the box if you will give such long explanations!

Mr. Justice J. Parke. Was there anything else? — I may have said something about the magistrates, and I did not think that the military ——

Mr. Attorney-General. You are not to give opinions.

Witness. Ask me any question.

Mr. Attorney-General. I cannot; you will not let me.

Witness. Put any question without an observation, and I will answer it?

It has been stated that you told the people that Colonel Brereton had given reasons that you thought satisfactory, for withdrawing the troops. Is that true? — I will not say it is true, or not. I do not say I did not say so; but I do not recollect it. It is very likely I did say so. I think I did to that effect.

He said, "He saw no reason why soldiers' lives should be sacrificed unnecessarily?" Yes; to which I said, "I think so too; but you are sent for the protection of the inhabitants, and they are entitled to your assistance."

Did you call it assistance for the troops to be sacrificed while the civil power stayed at home? — I do not know what you call it; I state the facts, and others must put their construction upon them, and I have no objection to hear yours; perhaps I might have said "protection;" probably it was.

I think I understood from you there was some difficulty on your part in letting any persons that assembled know that the 14th Dragoons were gone? — It was rather my wish to keep the fact in the back-ground.

To deceive them? — I will not adopt that word from any man in England. I had no intention to deceive any man.

Mr. Justice Taunton good-naturedly interposed, addressing the Attorney-General. "A construction may be put upon

the answer of an invidious character, which leads into those explanations to which you have objected."

Mr. Attorney-General. Perhaps there may; but I want to know whether Mr. Cooke, at the time he said he and his sons would not go out unless the military did, were kept in ignorance that they were not there to go out?

Witness. I do not know what you mean by being kept in ignorance. I had not mentioned it. He did not know it. I did not tell him.

Mr. Justice J. Parke. One of the jury wishes to know from Mr. Serjeant Ludlow, whether he is professionally engaged in the defence of the magistrates?

Witness. I cannot answer that with a simple Yes or No. I had a brief sent to me some time ago, and I sent word to say that, before I connected myself with the cause, I should wish to know whether I was to be a witness, as I could not appear in both characters. I came to town, and placed myself in the hands of Sir James Scarlett, Mr. Campbell, and Mr. Follett; and I have done what they advised me to do, and I am quite sure I have done what is right.

After this clever lawyer and amiable gentleman, but intractable witness, had left the box, Major Mackworth explained the way in which he first crushed the riot at six o'clock on Monday morning. "I met the 3rd Dragoon Guards with Colonel Brereton and Cornet Kelson at their head, patrolling through the street that communicates from Prince's Street to the Square, at the angle of the two burning sides. I met them at that corner just opposite to the mob, when, seeing that the mob had actually broken into the two houses by which there is an indent in the basin, by which the bowsprits of the ships in the basin come near the houses, it occurred to me that the shipping might catch fire, and the whole city be burnt. I took the liberty of mentioning that, to excuse the highly unmilitary act I did. I called out, 'Colonel Brereton, we must charge;' and, without waiting for his answer, I gave the word of command to charge."

Did you order several successive charges? — I did.

Under the extreme circumstances of the case superseding your superior officer? — Yes.

Colonel Brereton charged with you?—Yes; and as we were going at speed I said, "I beg your pardon, Colonel Brereton, but I could not help it." We saved the houses, but could not clear the Square. The mob got inside the rails of the courts before the houses, and collected as fast as we cleared them, and fired some shots.

After scattering the rioters, Major Mackworth brought the 14th from Keynsham, and made his report of the mob being dispersed to the magistrates.

At the time when the peace of the city was completely restored, did you observe there was any deficiency on the part of the mayor?—No, indeed, on the contrary; every suggestion that I could give, as a military man, he entertained, and had executed, or caused to be executed.

With the means that he possessed, are you aware of any thing that he could have done to have restored the peace of the city?—Nothing more than any means that I saw.

The destruction of private property on the Sunday evening had wrought a salutary change in the feelings of the factious citizens. "When I brought in the 14th Dragoons, I brought them through one of the worst parts of the city, inhabited by the lower orders, and at the doors we were welcomed with exclamations of delight and joy."

That was the same troop that had been hooted and pelted out the day before?—Yes, the same squadron.

I hope I may ask you, without disparaging my client, whether you discovered any great military talent among the aldermen of Bristol?—I had no opportunity.

You did not ascertain by examination whether they had been accustomed to defend a besieged town?—No.

Or to discipline troops?—No.

Major Mackworth threw his mantle also over the exposure made by the luckless colonel.

"May I be permitted to make one remark as to the 3rd Dragoons, and it is without having any bearing upon this cause. I am quite sure that the conduct of the 3rd Dragoons must have excited a strong suspicion in the minds of the magistrates and inhabitants, that they would not do their duty. But I beg to say, that from their conduct afterwards,

I am satisfied they only thought they were following the example pointed out by Colonel Brereton, and that he did it probably from humane motives."

Captain John Cooke expressed his firm opinion that it would have been a most imprudent measure to have put fire-arms into the hands of the constables to suppress the mob. "The most imprudent thing that could have been adopted. There were no soldiers to support them. They must have acted on the offensive; and it was not probable that that could have lasted with undisciplined persons. Although they might for a time have been of use, they would have lost their arms, and been unable to stand against the mob; and there must have been a great sacrifice of life and property."

This judgment was sanctioned by Major Mackworth.

Mr. Brice proved the procuring billets for the Dodington troop from the mayor.

Mr. Daniel, a surgeon, related the shameful manner in which the special constables at the palace were deserted by the military, and left exposed to the wrath of the multitude. They formed many thousands, far too numerous to make head against. He was called to by the mayor to render him assistance, and took him by the arm and led him into the centre of the Green.

Did you observe whether he seemed exhausted?—When I got into the centre of the Green, I said, "We can wait a little while here, we are here free from disturbance; and you can reflect what you can do, or what can be done." As soon as I got to the centre of the Green, he appealed to me in this way. "Daniel, I have done all that I can; is there any thing on earth you can suggest?"

Mr. Daniel offered the shelter of his house at Clifton to the mayor; but he would not quit the city, that he might be at hand, in case it should be necessary for him to do any thing, or to take any necessary measures. He was not permitted to stay at the house of Mr. Granger, where he first took refuge, lest the house should be attacked. They then went to Sheriff Lax's, and saw Townsend. "I told him," said Mr. Daniel, "that the mayor was at the door, and I wanted to bring him in there. His reply was, that Mr. and

Mrs. Lax and the female servants had all left the house; and that every thing valuable that could be moved had been removed. That he with another man who was standing by, were left in charge of the house. That if the mob assailed it, he was to throw the coping-stones over, to endeavour to intimidate them; and if that did not succeed, he was to escape over the roof, and leave the house to its fate.

When you led the mayor away from the conversation you have mentioned, had you the least idea, or was one word said by either of you, where the mayor was to go?—Not one word; for in my own mind I meant to take the mayor to my own house.

Did one word pass in the presence of that man about your going to Mr. Fripp's?—Impossible. I had no more idea of going to Mr. Fripp's when I left Mr. Lax's door, than I have of going to Mr. Fripp's this morning.

"The mayor said to me, when we were near the top of Park Street, 'I wonder if Mr. Alderman Fripp is at his brother Daniel's in Berkeley Square—do you know them?' —I said, 'Very intimately;' and that I would go and find out." They went together.

The mayor was welcomed by Mr. Fripp, and the witness Daniel there left him.

I beg to ask, although when you found the mayor in the state you describe he appeared much fatigued, did you, either that night or the following morning, observe in him any want of personal courage and coolness?—My reply to that would be this: that looking at the extreme personal fatigue which he must have undergone during those days, and looking at the overwhelming circumstances that surrounded him, I think he showed as much, or more presence of mind, than would fall to the lot of many men.

When pressed by the Attorney-General to relate all that passed on calling at Sheriff Lax's, the conduct of the mayor came out in still more favourable colours.

"When I directed the messenger to go to several places and explain where the mayor was, and gave him the caution that he was not to tell any body but the authorities to whom he was sent, the mayor turned round very sharply upon

me, and said immediately, 'But it must be known where I am.'"

Mr. Daniel Fripp, to whose house the mayor was brought, and in whose drawing-room he sat up all night, was then called, and explained that the caution not to mention publicly where the mayor had taken refuge, was given by himself unknown to his guest, on account of his wife's illness, who had been alarmed into fits.

The 14th Dragoons, according to Mr. Fisher, the livery-stable keeper, were quite fit for service when Colonel Brereton ordered them out of the town; and he knew the fact well, for the remainder of the troop had been in his yard the whole of the night. He had room for eighty horses, and had told Colonel Brereton of the fact, and was lighting up the stables, when the troop of yeomanry rode off to Dodington.

Mr. Harmer, an attorney, narrated the foolish and unbecoming manner in which Colonel Brereton bent to the humours of the mob, and truckled to their commands. "The mob were shouting, 'The King and Reform;' and one man shook him by the hand, one of the mob; and he said, 'I am for reform, my boys, as well as you.' They cried, 'Murder the bloody Blues.' Colonel Brereton assured them that he would send the Blues out of the town, and was then cheered. I heard him afterwards tell the people he had sent the 14th Dragoons out of the town."

The 3rd Dragoons abetted the work of plunder at the palace. "As the soldiers advanced, the mob went out through the soldiers' horses with plunder in their hands." Mr. Harmer laid hold of one man. "I cut at him with my sabre. I got within reach of him, and was about to lay hold of him, when a soldier said, 'You have been already told to put up that weapon. I desire you to put it up immediately, or I will cut you down.' Having, in the meantime, seen a soldier cut the Bishop's butler in the face, I thought I had better let the man go. The butler was struggling with a man who had come from the palace with something which he desired him to give up. He said, 'Give me that,' and then got the man on the ground eventually, and said he would never loose him; that he was placed there by his master

the Bishop, and that he would exert himself, as long as he had life, in the protection of his master's property, or to secure the villains who had set fire to it. When he said that, the soldier cut at him with his sabre, and cut him across the nose. Then the prisoner got loose."

The Reverend James Bulwer, a clergyman, spoke to the disposition of the people. "I heard them say 'that it served them right,'—meaning the corporation, 'for bringing that arrogant villain, Sir Charles, down to insult the citizens of Bristol.' The class of persons who said this were gentlemen with silk umbrellas over their heads, and females with silk cloaks and pelisses."

Mr. Isambird Brunel, the eminent civil engineer, saw several acting as special constables on Monday, who had been active rioters on the Saturday previous. One, in particular, rescued a prisoner twice from his hands.

Mr. Wood "was at the Council-house on Sunday afternoon, when Mr. Herapath and Mr. Ven, the President and Secretary of the Political Union, came in, and said that the cause of all the disturbance was that the military had fired on the mob without sufficient provocation. I then stepped forward and said that Ven's opinion ought not to be taken, for I had seen him cheering on the mob the preceding evening, in front of the Mansion-house. He denied it, and Alderman Savage turned round to me, and said, 'My good fellow, make no accusations now; let us all be united.'"

Here Sir James Scarlett closed his triumphant case, taking on himself, with perfect propriety, the entire responsibility of not calling the magistrates, who were themselves the subjects of informations.

The feelings of the Attorney-General appear to have been deeply moved, and his spirit exacerbated by the stinging attacks, the numerous covert sarcasms, of Sir James Scarlett. In his contemptuous crushing notice of those invidious topics and appeals to prejudice, under which his antagonist had endeavoured "to envelop, to sink, and to bury the merits of the case," he was singularly happy; less effective on the evidence in support of the charge, for there the facts sunk beneath him, and there was no real case for crimination.

"My learned friend thought proper to tell you, not with

a very fortunate mode, I think, of ushering in a powerful topic, that the magistrates had not been guilty of that inflammation of the public mind which he evidently meant to impute to others. He said that they had not directed any declamations against corporate property and corporate monopolies, and so on, as if for the mere purpose of reminding you of that almost forgotten declamation with regard to corporate robbery with which our ears were made to ring some eighteen months ago. It was not very likely, to be sure, that the magistrates of a corporation should be among the first to sound a crusade against corporation property; and therefore that may be taken as a mere introduction (and I think very far from a happy one) to the antitheses that were to follow.

"My learned friend then went on to say something about the taxes, and he was to be reminded of the taxes by the burning of the Custom-house; and inasmuch as the customs are an important part of the King's taxes, he told you that the public creditor had never been held up as an object to be despoiled by the magistrates of Bristol, and that they had never preached up the doctrine that you should decline to pay your taxes if the government did not go on as you like. Most reprehensible doctrine, but which the good feeling of the country had buried in oblivion, and even though Lord Milton had said it, he scarcely expected that the temporary indiscretion would have been dug up by the learned member for Maldon, — a borough in which Lord Milton was at least as much appreciated as his friend's merits. There was another topic — the bishop's palace. You see how prepense — you see how premeditated this was. He said that if the bishop's palace was also set on fire, the magistrates had not called upon the bishops to set their house in order; an old insinuation also against the prime minister of the country, resulting from nothing but the ignorance of Scripture language on the part of those who made it, for it is perfectly impossible to give it the sense that some declaimers have thought proper to attach to it."

Against these political taunts the Attorney-General, in the bitterness of his wounded feelings, launched a poisoned missile with dexterous aim, and countermined the miner. "Had I taken up a newspaper accidentally, and found these things

stated there, I should have said, who is it that has come forward with these old and forgotten and unpleasant recollections? It must be, I should have said, some gentleman who has not been very successful in obtaining the ear of the House of Commons, who knows that he never can enter there again under the operation of this wicked Reform Bill, and who has taken the opportunity of visiting some club at a remote country town, with all the feelings that oppress his mind at the moment, giving to them all that which he ought to have delivered in the House of Commons, if he meant to have given it at all. Or perhaps I should have said, it is somebody who has not exactly succeeded in obtaining some patronage that he may have expected from the government, and who therefore wishes to show them how great a loss they have had in losing one who could declaim so ably and so warmly; and if any body had said to me, look at the top of the speech, you will see the name of your learned friend Sir James Scarlett, as having made it in defence of the Bristol magistrates, I should have said, the thing is impossible, it is the press—it is the malignant and calumnious press that has invented it for the purpose of defaming my honourable and learned friend; it is quite impossible that he should have uttered these opinions,—it is out of his nature,—he is the most discreet and the most subtle and considerate of advocates,—no man has such experience in courts of justice, and such management in winding the minds of a jury to his purposes; but then, perhaps, on second thoughts, I should have said, if he really has indulged in topics of this description upon such an occasion, it shows that he thinks that his case is desperate whenever it comes to be calmly considered.

"The comments on his own introductory speech must have been taken from some garbled report of it in a newspaper."

Sir James Scarlett. I read the shorthand writer's note, and I read no newspaper; I had the shorthand writer's note in my hand.

The Attorney-General rejoined, he must have been a shorthand writer indeed! He had been wholly successful in justifying his own conduct, and taking the edge off his friend's keen irony; but when he proceeded, with the austere virtue

of a Roman censor, to denounce the apathy of the magistrates, and to insist that the mayor ought to have exerted himself more, whether he could have succeeded or not, his case broke down. "I am also supposed to have said the mayor was bound to have gone out with ten men, even for the purpose of resisting the mob. Now, did I state any such thing? Did I say that the mayor was bound to go out and fight with an insufficient force? What I said was this—and I ask you, for you are judges of what is reasonable,—whether I did not say what was reasonable when I said that he should have kept but ten men together, if no more were to be got, for the purpose of making additions to that small number; and for the purpose of giving time to the returning good sense of the inhabitants to swell their ranks to a considerable amount."

When the Attorney-General declared that he required at the hands of the mayor a superintending care over the peace of the city, at every moment, at every part, he exacted more than human nature, in its weakness, could accomplish,—a duty of which physical inability excused the performance. "Oh, but the magistrates have not been fairly dealt with; those who are most nearly connected with the mayor, and who largely share the blame, ought have been called. In common sense, how would my learned friend have wished me to proceed? Perhaps he would have liked me to come to this Court, and apply for a criminal information upon affidavits, and then to have filed, by that double proceeding, an *ex-officio* information. That, I suppose, would have been the conduct of a tender-hearted Attorney-General.

"Then, it seems that the form of the information is to be very much complained of—and I think my learned friend used the expression 'It is an *omnium gatherum* information.' Now, I think, I can give him a better expression than that which my learned friend has given me in the parliamentary debates, which happened in the year 1830. 'The House was aware (it was said) that there had been recently filed against Mr. Alexander three *ex-officio* informations; the first was for a libel on Lord Chancellor Lyndhurst—the second for a libel on the Duke of Wellington and His Majesty—

and the third was for a libel which he was unable to describe in any other way than by calling it an omnibus libel, or what in cookery was called a hodge-podge.' It was for a libel against so and so, and then the speaker goes on to describe what it is. Now, I dare say you will trace, by the vein of humour that runs through it, that it was the Recorder of Bristol who was making the observations upon three informations, one of which he called 'an omnibus information,' but it was not mine, for it was filed by the learned Attorney-General who succeeded him in the office, and who now conducts the case of the Bristol magistrates.

"Such a defence not resting upon the genuine motives of the men, according to their views at the time, must have been got up by those legal advisers whom my learned friend thinks that I ought to have called as my witnesses, for them to have poured forth that volley of words which you heard yesterday — and which, I believe, if poured forth at the time of the riots, would have put down any mob, even a Bristol mob!"

When his law officer asks, on the part of the King, how it is that his prisons were burned under their immediate observations, and the prisoners let loose, why it was that the conflagration of the city of Bristol proceeded for so many hours uninterrupted, the answer is easy,—because the commanding officer would not allow the military to act—because the citizens would not come to the rescue—because excited reformers encouraged rioters, and the magistracy had no force at their command to put down the mob.

His high-minded avowal with reference to the mayor's personal conduct reflected honour on the speaker. "It is with the highest degree of satisfaction that I am able to express to you my full and entire conviction, that that personal cowardice which I never imputed, but as to the possibility of which I stated any facts which might afterwards lead to an inference on your part, that I think it is most fully and completely disproved. I give Mr. Pinney full credit for having acted with courage and spirit;—I think he is much to be compassionated. In many parts of the case that have appeared before you, I think he has not had the best counsel, nor the best example about him; but I think there is much

to be said in his favour, even when you shall have pronounced that verdict of guilty, which, in my humble judgment, it will be your duty to pronounce."

The criticism of the Attorney-General on the form of the notice distributed at each of the churches savoured a little of special pleading.

"It should not have been, as it was worded, an earnest request to assemble and proceed to the Guildhall immediately, but a categorical command. Instead of merely entreating the inhabitants to meet them at the Guildhall, in order to assist them in devising measures, they chose to throw themselves on their knees before those whom they ought to have commanded to come together with such arms as they could procure."

The mandate suggested would have been in the Glendower vein:—

"I can call spirits from the vasty deep,"

and the answer was pertinent:—

"But will they come when you do call for them?"

His defence of the troops and inculpation of the magistrates for taking refreshments was scarcely more successful.

"These poor dragoon guards have been made the subject of a great deal of wit and merriment; but when the corporation had allowed the mob to get that head, it was the interest of the dragoons to shake hands with them. These magistrates can find opportunities to get their mutton chops and glasses of wine, and yet they expect these men to sit upon their horses for a great number of hours, without any food; and if they had not got this little sustenance from the people, there was nowhere else for them to get it."

The speaker forgot that the mayor had sate up two nights, and had neither wine nor mutton chop, but had tasted less food than the soldiers. Hurried away by his feelings when enumerating the extent of the mischief, thirty houses consumed by fire, the Attorney-General let fall a harsh expression of condemnation of the magistracy far more austere than their conduct justified.

"Suppose you had owned one of them, and had been

absent at the time, and the magistrates had retired, one at nine o'clock to bed, and the others to some other places, I think you would have had a just right to complain; and I will never cease to say, that those unhappy men who were executed for the commission of crimes, so encouraged, have fallen victims to the apathy of the magistrates—it is the impression upon my mind, and I am bound to declare it, entertaining it honestly,—I say, their encouragement of the crime by not resisting it by all the means which they had, as magistrates, possessed, does divide the responsibility with those men, the victims of the law, or of carrying it into effect."

In a very different spirit did he review, and excuse, and vindicate the memory of Colonel Brereton.

"I have no doubt that in mounting a breach, Colonel Brereton would have sacrificed his life without hesitation; but when he is called upon to put his fellow-citizens to death with the sword, I ask you whether his answer is not a reasonable and just one in saying, that the soldiers' lives are not to be needlessly exposed? It is some satisfaction to think that Colonel Brereton's memory receives this tardy vindication. That he was no traitor, is now perfectly clear—that he was no coward, was proved during the course of the proceedings—he had taken no degree in the University of Paris; he came forward to do what he thought was best for the public service, and it is not denied, that up to a late period he did what was the best; and when Mr. Hellicar is finding fault with him for not firing upon the mob on the Saturday evening, he would have done a most absurd and most mischievous thing if he had fired, as well as most cruel and inhuman."

For this excessive leniency to the memory of the deceased officer the Attorney-General atoned by the severity with which he pressed for a conviction against the living magistrate. "I charge it upon the mayor as a terrible dereliction of duty that he had not found means to make it perfectly known where he would be found in the interval between leaving the office and his return to the Council-house. I ask for an account of what was done that night. I ask what the magistrates did between leaving the office, and when Major Beckwith cleared the streets?

"Gentlemen, it is dreadful to think of Captain Codrington thus wandering about the streets, in search of those who would have authorised proceedings, which would have rendered all effusion of blood unnecessary. It is mainly and particularly, for neglecting to watch their opportunity to turn the tide, and keep together such a force as, when the citizens came to their senses and became sober, was an adequate force for the suppression of the riot; it is upon that I am justified in asking for your verdict against that gentleman, the first magistrate of this devoted city. We have seen the most calamitous events, the most widely spread misery, desolation, and crime, and we have seen nothing like a reasonable effort to prevent it."

The Attorney-General closed his impressive reply with the following grave, dignified, and solemn call for condemnation, the spirit of the advocate seeming overshadowed with the stern severity of the judge, when he charges the jury with impassive firmness, but anticipates a conviction.

"Gentlemen, this is indeed, as my learned friend says, a most important case; it will guide the conduct of the magistrates of England in all time to come. We have gentlemen from a county of the first respectability, called to decide this case; and I do assure you, I have never once asked a question as to the political sentiments of any one of you. I have endeavoured to argue it upon its own merits, and with the same simplicity and distinctness that I laid the case of felony before the jury at Bristol. If I should appear to have appealed to any feelings, which may, by possibility, exist in your minds upon subjects endeavoured to be connected with this case improperly, I do most solemnly assure you, that I lay them aside. I consider this as a case on the part of the king's government, without the slightest reference to any effect that may be produced on any party in the state, and without any consideration but this—aye or no,—is the truth of this case with the mayor, or is it not? Your own views of your duty will go far to decide this case. If there is a duty more sacred than that of a magistrate, it is that of a juror, and it is not to permit himself to be led away here, by any topics of momentary excitement on the part of the

defendant, or on the part of the Crown; for such attempts would be most unjustifiably made, and it is only to help them out of the case that I allude to them now, entreating you will think no more about them than if they were a part of the history of some Greek republic, and confine your attention solely to the point, whether you can, in your consciences, and upon your oaths, say to the defendant, 'You have conducted yourself with such energy as the mayor of Bristol, that from the beginning to the end of these riots, you were justified in imputing their continuance to the indisposition of those people surrounding you, who had a common interest and a common feeling, up to a great extent, and whose lives and properties were under your protection, and who had a right to expect the exercise of reasonable prudence, in arresting the most dreadful calamities that can fall upon mankind.' This is all I wish; and I give it as my parting charge, if I may say so, upon this subject; dismiss all feeling, and let all prejudice, of whatever description, sleep entirely in your minds; take what you conceive to be the true criterion of truth, and ask whether your own conduct would have been satisfactory, if like that of the gentleman accused. I acquit him of any of the bad motives that degrade human nature; but ask yourselves whether I have not proved, that he has conducted himself in such a manner, that if other magistrates adopted him as an example, the peace and tranquillity of the whole community would be permanently endangered."

The trial was then adjourned to the seventh day, Thursday, November 1st, when Mr. J. Littledale summed up the evidence most favourably for the accused, intimating his own opinion in his favor upon every point.

"The charge of general misconduct was very vague, and led to great latitude of inquiry. The conduct of a magistrate in endeavouring to suppress a riot should be visited with the most lenient consideration. On the one hand, if he exceeds his power, and occasions death, or the destruction of property, or other violence or injury, he is liable to be proceeded against by indictment for murder or manslaughter, or as the case may happen to be. On the other hand, if he neglect his

duty, and does not do enough, he is liable to be proceeded against, as charged in this information, for a criminal neglect of duty.

"Did he use those means that the law requires to assemble a sufficient force to prevent the mischief? and did he make use of that force to prevent the mischief, that an honest man ought to have done by his own personal exertion?

"The mayor acted on the advice of his lawyer, the town-clerk, upon all legal points; and on the advice of an officer of considerable rank and standing upon all military points; and if a public officer, neither a military man nor a lawyer, acts according to the advice of those best able to give it, that will be for the consideration of the jury, upon the whole case, if the lawyer tells him, upon legal points, what he ought to do, and the military man tells him, upon military points, what he ought to do, and he acted accordingly, it will be a point for the consideration of the jury.

"If all the misfortunes that occurred could have been foreseen, a greater force might have been collected; but, Gentlemen, you are not to take that into consideration,—you are to consider the guilt of the defendant according to the circumstances that occurred at the time,—you are not to consider probabilities, because an immense force might have been provided, and no riot have occurred, and a person would have been laughed at for exerting himself in that way;—you are to judge from what passed at the time. Three hundred constables might be deemed amply sufficient. As to the mayor not going out to head them, it appears to me that the mayor, upon such occasions, in point of law, is not bound to go and head the constables. That is trusted, generally, to the head or chief constable, who is a man generally adapted to it; and the mayor's exertion would not be equal to the exertions of the head constables."

The spirit of the excellent special pleader revolted at a novel term introduced into the criminal information, and his sense of fairness excepted to its justice.

"Now, Gentlemen, it is said that he did not organise the special constables. With regard to the word 'organise,' that is a new term, both in the law and in the English language,

although often used; and I do not know that I ever found it put into an indictment, or information, or declaration, at least I never saw it before; but that is, perhaps, disputing about terms: however, that is the complaint; that he did not arrange would, perhaps, be a more legal term. I do not know that it is the duty of a mayor to arrange the special constables that is the duty of a man who has had experience in matters of that kind;—if he has not had considerable experience, I do not know how he is to set about it."

The Judge's kindness of heart and shrewd simplicity of manner and expression, gave additional weight to his observations; all of which, without exception, tended to the complete exculpation of the mayor.

"He is charged with want of energy, and see what does he do: they desire him to be energetic; he gave directions that the troops should fire if necessary; and if he had ordered the troops to fire, and exhibited that energy, and any person had been killed, and he had been indicted for murder, it might have been somewhat difficult, I do not say he would not have made out a case, but if he had acted contrary to the directions of two military officers, and ordered the troops to fire, I think he would have found some difficulty in answering it,—at least a *primâ facie* case would be made against him. I mention this to show the difficulty of the situation in which a man is placed; if he goes and does too much, he is liable to have one species of prosecution against him, and if he does too litttle, he is liable to another.

"Then, Gentlemen, coupled with this, it is matter of complaint, that the mayor did not keep a sufficient force of constables in the Mansion-house during the night. The answer to that is, that the riot was over, it was not necessary. If the riot was over, and the streets are clear, why are you to keep special constables in the Mansion-house? Besides, it was actually impracticable; the special constables had gone away.

"The most important charge remains. 'Did he use those means which the law requires, to assemble a sufficient force on Sunday morning, to suppress the riots and prevent the mischief that took place? Did he call upon the king's subjects to assist him in suppressing the riot. Gentlemen, that

is the common-law obligation thrown upon justices of the peace. You will have to consider whether that has been done upon this occasion; — that is the material thing, in my opinion, for you to consider. Other points will arise in the case, which I will state hereafter; but in my opinion, if he has done that, he has done all that the law required of him.

" The mayor sent notices to the different places of divine worship, not only a request that they should assemble, but a request that they should form themselves into bodies, and as soon as they were formed come to the Guildhall. Was this a reasonable warning? for that is all the law requires: it was the most expeditious mode of getting the people together that could be devised. Did the mayor use aright the small force that came at his call? It would not have been prudent in him to have put fire-arms in their hands. It is a very different thing to using fire-arms in a building — there people are in a body, and you can see what they are doing. But here they are to go into the mob and use them indiscriminately. I should say it is not to be approved. He very prudently concealed the fact of the military being sent away. He did not adopt any plans, because there were none to execute them. I should apprehend there could have been no difficulty in getting a plan, if one thousand or two thousand people attended; but there would have been a difficulty in forming a plan for so small a number of persons, — nothing could be decided upon for them to do.

" The mayor had done all that could be done to collect more. He is blamed for not calling out the Chelsea pensioners. I apprehend that he is not bound to call upon the Chelsea pensioners any more than the king's subjects in general. There was no disposition to assist the mayor. He did what was equivalent to raising the *posse comitatus*, but they would not come. It is further alleged against him, that he did not keep a sufficient military force, and a sufficient civil force of resolute people, to act together as occasion might require. I do not know that that is any part of the duty of a justice: he is to suppress riots; but as to keeping a sufficient force to act as occasion might require, it is no part of his duty, — that is an important part of the duty of a mili-

tary man, but it is not the duty of a justice of the peace. Besides which, it appears that he had not a sufficient force to keep, so that he could not spare any; and when a man is called upon to act with a corps of reserve, it seems to imply that he has a sufficient force to allow of a corps of reserve to be taken out.

"The specific charge of not protecting the Bridewell, gaol, and palace, is answered by the fact that he could not; he had no military and no adequate civil force. Where could be found the twenty or thirty resolute men talked about? There were none such to be found. Then, Gentlemen, another charge against the mayor is, that upon being required to ride along with Major Beckwith, he did not do so. Gentlemen, in my opinion, he was not bound to do so in point of law. I do not apprehend that a justice of the peace is bound to ride along and charge with the military; I think he was not bound to do so; a military officer may act without authority of the magistrate, if he chooses to take the responsibility; but though that is the strict law, there are few military men who will take upon themselves to act without a magistrate, except on the most pressing occasion, where it is likely to be attended with a great deal of destruction of life:—a man, generally speaking, does not like to do it without the authority of a magistrate, though the authority need not be given by his presence. The mayor did give his authority to act,—the order has been given in evidence,—he requested Colonel Brereton to do what was necessary to preserve the peace. I should say, in point of law, a magistrate is not bound to ride with the soldiers, and more particularly upon this occasion, where the presence of the mayor might be required to give general directions. If he made one charge, he must make as many other charges as the soldiers make. It is not in evidence that the mayor was able to ride; but it is not only necessary to ride, if you make a charge, but you must ride as soldiers do; if you do not ride in a military manner, the probability is you would soon be unhorsed, and do more harm than good; and more than that, if a man was to appear in a plain dress, heading the military, if the mob were disposed to resist, the mob would select him

out to destroy him; and I do not apprehend it is any part of the duty of a person who gives general directions, to expose himself to all kinds of personal danger.

"The personal conduct of the mayor seems completely justified; he had that kind of feeling in not leaving the Mansion-house that the captain of a ship has, when his ship has been wrecked; he is the last man to leave the ship. The force there was immense, and according to the testimony of some of the witnesses, it would have required a very strong military force to quell them. He could not get there,—it was not in his power to get there,—he was between two fires, if I may use the expression—the mob prevented his getting forward in that direction, and the mob in the bishop's palace shut him out the other way. You see the difficulty in which any person in the situation of the mayor is placed; on the one hand, he is put in a situation of extreme peril, if he exceeds his duty; and he is placed in a situation of extreme peril, if he does not come up to his duty; and, at the same time, in point of law, if a man does not come up to the very point at which he is to do his duty, he is liable.

"The whole case is before you: you are to consider that this is a general indefinite charge; it is not any specific thing that is to be done, but a general dereliction of duty, not collecting a sufficient force; it is for your consideration. The question is, whether he used those means that the law directs, to call out a sufficient force; and whether, when the force was assembled, he made all the use that the law requires of such a force as he actually collected. He was not bound to endeavour to get any other force than that which came to him upon his warning; that is what the law required.

"There is no doubt a magistrate is put in a situation of a very great degree of responsibility; you will take into consideration whether there has been criminal neglect. If you are of opinion there has been criminal neglect you will find the defendant guilty; if there has not been criminal neglect, you will find him not guilty."

After this forcible charge of the single-minded judge—Lord Tenterden himself could not have held the shield before

an assailed magistracy with a firmer hand — acquitting the defendant upon every point without a single exception, there could be no doubt what the verdict of the special jury must be. But the twelve Berkshire gentlemen were not content with pronouncing a verdict of not guilty; simply, they rightly thought, that the peculiar circumstances of the case, and the just protection of unoffending magistrates, required a further and stronger expression of their opinion, that he was entitled, in the fullest manner, to an honourable acquittal. They were absent twenty minutes; an interval of time just sufficient to enable them to draw up the following important expression of opinion, which was read by the foreman with much emphasis, on their return to court: —

"We unanimously find Charles Pinney, late Mayor of Bristol, *Not Guilty* of the misdemeanours imputed to his charge. We are unanimously of opinion, circumstanced as he was, menaced and opposed by an infuriated and reckless mob, — unsupported by any sufficient force, civil or military; deserted in those quarters where he might reasonably have expected assistance; that the late Mayor of Bristol acted, according to the best of his judgment, with zeal and personal courage."

There occurred immediately after this declaration, a painful episodical supplement, which presents too remarkable a feature in the case to be omitted. It is satisfactory to record that this sharp explanation led to no permanent bitterness, or long-continued estrangement.

Sir James Scarlett. My Lord, I am desirous, before the jury withdraw, and in their presence, to assure your lordships, that in the conduct of this cause, as far as I have been concerned, I have neither introduced, nor have I intended to introduce, any one topic that did not grow out of the evidence, and was not strictly connected with the cause. However, as His Majesty's Attorney-General did think fit yesterday ——

Mr. Justice J. Parke. It is quite unnecessary to make any observation of that kind: it is unfortunate that any remarks should be made upon persons not before the Court, or of a personal nature on one side or the other.

Sir James Scarlett. Whoever gave my learned friend information that I had personal motives, or informed him of the facts he insinuated, has given him false and malicious information; and, whenever he makes a charge against me that I can reply to, I hope to be able to prove my own innocence, as well as I have proved that of Mr. Pinney.

Mr. Attorney-General. I hope I shall be allowed——

Mr. Justice J. Parke. It ought not to be permitted.

Mr. Attorney-General. Having heard one side, I hope you will hear the other. I was not in the least degree prepared for this most extraordinary statement of my learned friend. I beg to say, in the face of your lordships, and of the jury, and the country, upon my honour as a gentleman, that I have introduced no topic that I did not think essential for the right disposal of the cause, and for me to deal with it in the manner I have dealt with it. As to what has been said of information conveyed to me, no such information has been conveyed. I have merely stated what I thought right to remove a prejudice that I did not introduce. I appeal to the jury, whether any personal topic was introduced by me, in bringing the case before them.

Mr. Justice J. Parke. I must say, that I think this had better have been omitted on both sides.

Mr. Attorney-General. I did not introduce it.

Mr. Justice J. Parke. I do not know whether you mean to proceed with the other cases.

Mr. Attorney-General. I have no intention to announce it now; but those gentlemen of the jury attending in the other cases need not remain.

NOTES TO TRIAL OF THE MAYOR OF BRISTOL.

Note 1.

The erroneous notion, which led to the extensive conflagration of London in 1780, that soldiers were powerless without the authority of the civil magistrates, lingered for another half century, as the surprise

expressed at the luminous charge of Chief Justice Tindal clearly proved. The jealousy entertained in this country against standing armies, and the deep-rooted dislike to the interference of soldiers in all civil tumults, may best account for the long prevalence of this vulgar error. "Have you heard," writes Horace Walpole, after the riots of 1780, "that the common soldiers style one another 'Your Worship,' as being the only justices of the peace." The error was refuted by Lord Loughborough, in his charge to the grand jury of the county of Surrey (State Trials, vol. xxi. p. 485.); by Justice Holroyd, in the case of Redford v. Birley, 3 Starkie, 101.; and especially by Chief Justice Tindal, in his elaborate charge at the special commission at Bristol. The question may now be considered to be finally set at rest, that military men retain their right as fellow-citizens to interfere in the preservation of the peace, but must exercise a guarded discretion.

Note 2.

The duties of magistrates in periods of public tumult are clearly defined in this trial; and the reader will find the law most accurately given in the report of the case, Rex v. Pinney, 3 B. & Adol. 947.

Note 3.

The want of horsemanship threw an air of ridicule over the Bristol magistracy, and made them meet followers of Hudibras: —

> "Great in the seat, great in the saddle,
> Who could as well bind o'er as straddle."

But though one magistrate is reported to have made the charge of being a good horseman a matter of personal quarrel, he did not sink quite so low as Kennett, the Lord Mayor of London, when he begged the mob not to do more mischief than was necessary!

Note 4.

It was denied by the Attorney-General, that the celebrated and ominous remark of Earl Grey to the Bishops in the House of Lords, "to set their house in order," could be properly regarded as a threat. From the context, however, it would seem fair to infer that a menace was implied. Isaiah, chap. xxxviii. vers. 1. & 2. "In those days was Hezekiah sick unto death. And Isaiah the prophet, the son of Amos, came unto him, and said unto him, Thus saith the Lord, 'Set (in the margin Hebrew, 'Give charge concerning thine house,') thine house in order: for thou shalt die, and not live!' Then Hezekiah turned his face toward the wall, and prayed unto the Lord." The same passages occur in 2 Kings, c. 20. vers. 1 & 2.

NOTE 5.

Erskine, when defending Mr. Kennett, the unfortunate Lord Mayor of London, against a criminal information for not doing his duty in suppressing the Gordon riots, stated that he knew no subject upon which such universal ignorance prevailed as the duties of citizens and magistrates on the occasion of riotous and tumultuous assemblies. "In times of tranquillity, men do not examine into their powers to suppress, or prevent, disorders, which they do not foresee." These duties are best defined in the cases of R. *v.* Brown, 1 Carrington & Marshman, 314.; Price *v.* Seeley, 11 Clarke & Finnelly, 28.; R. *v.* Hunt, 2 B. & Ald. 566. The cases are well collected in Mr. Wise's Treatise on the Law relating to Riots, 1848.

THE TRIAL

OF

MR. MOXON

FOR BLASPHEMY, IN PUBLISHING SHELLEY'S WORKS,

BEFORE LORD DENMAN AND A SPECIAL JURY,

IN THE COURT OF QUEEN'S BENCH, WESTMINSTER,

June 23, 1841.

Counsel for the Prosecution: Mr. *Thomas.*

Counsel for the Defendant: Serjeant *Talfourd* and Mr. *Hayward.*

Is the eloquence of the Bar on its increase or decline? has it attained the zenith or *nadir?* There would be manifest presumption in asserting the rise and progress of forensic oratory, when such stars as Erskine and Brougham have sunk below the horizon; and we should be loth to admit its fall, though some gradual declension may be suspected. There have been singular alternations, ebbs and flows, not easily calculated or explained, in the continuous stream of speech, the popular addresses to juries that have now for seven or eight centuries reverberated through Westminster Hall. Not to mention earlier periods, illustrated by the rhetoric of Sir Thomas More, and of the notorious Dudley, the language of the leading lawyers in the Elizabethan age, Pickering, and Yelverton, and Bacon, was highly ornate, rich in imagery, full of figure, glowing with metaphor. When the last orator — the greatest of a great era — spoke of duelling as the *puppetry* of honour, declared that a man's reputation ought to be like our Saviour's coat, without seam, and asserted against persons of fair fame, but really worthless, that there

is no pomegranate so sound but may have a perished kernel, — when he exclaims, "Far is it from us to blazon our names in blood," who does not perceive that the spirit of the fanciful pleader is all compact with that of the old dramatists, full to overflowing with simile and illustration? The wretched taste of Sir Edward Coke, with his fantastic learning and grotesque pedantry, overlaid for a season real eloquence. When such conceits as these, "S. P. Q. R. mean Stultus Populus Quærit Romam," — "The science of Pleading is so called from Placet, because of its exceeding pleasantness;" or this miserable pun, on prosecuting Cuffe for high treason, "he would give him a *cuff* that should set him down;" — when such conceits are introduced as substitutes for wit, and clinches preferred to more refined figures of rhetoric, what reader of taste can wonder at the decline of the art? The amazement which the peculiar classicality of this great law authority has occasioned is not unamusingly described, though in a tone of clever exaggeration, by a modern lecturer on civil law. "Who is that savage?" a foreign jurist would ask, with no small wonder, if the speeches of Sir Edward Coke were laid before him. "Whence comes this wild man, naked, tattooed, painted, decked out with feathers and beads and whimsical trappings, with rings and fantastic toys in his ears and nostrils. It cannot be that he was Attorney-General of the King of England in an age of refinement, the contemporary of Cujacius, still the very eye of English jurisprudence, and the light of their law!"

The debasing example of Coke, and his rare case learning, exercised a pernicious influence over all pleadings at the bar, and, during the sixty years that Maynard practised, (so long without precedent or sequence was the career of that veteran lawyer,) points of casuistry and the refinement of special pleading intruded into the province of rhetoric, and thrust forth the art without remorse or pity from our courts of law. So low and homely had become the vernacular of English advocates, that in the trial of the Seven Bishops, whose defence, — the cause of every Englishman, as it involved the sacred right to petition, — should have thrilled with trumpet note through every vein in their hearers, and

made the hearts of all who listened and sympathised in secret burn within them, this was the solemn peroration publish it not in a note to Cicero's orations! of the inelo-quent ex-Attorney-General "The defendants have not acted as busybodies. The other side would have this petition work by implication of law to make a libel of it; but by what I have said, it will appear that there was nothing of sedition, nothing of scandal in it, nothing of the salt and vinegar and pepper that they have put into the case. We shall prove the matters that I have opened for our defence, and then I dare say your lordships will be of opinion we have done nothing but our duty!"

Jeffreys "would have none of the enamel and garniture of the bar;" and even after the Revolution, when the Treason Bill had unlocked sealed fountains of oratory by permitting counsel to plead for state criminals, Holt and Trevor and Raymond appear to have listened with ill-concealed impatience, and to have been instant in rebuke whenever the spirit of counsel rose with the occasion. Sir Bartholomew Shower, Lechmere, Jekyll, the profound lawyers of the day, revolved like heavy machines, mere cogs and wheels, round interminable cases of black letter, or moved wearily, as if in fetters, when compelled to leave their darling year-books, and, instead of minute cavils or abstruse points, to address English gentlemen in good honest Saxon, and speak to be understood. In the unclassical reigns of the first two Georges, refined thoughts in apt language, proper words in proper places, might scarcely be expected even from practised speakers. The orators of St. Stephen's sought no companionship, and abjured all affinity, with the gentlemen of the long robe, who, strong in law and erudite in Norman French, would not on their part condescend to borrow graces of diction or charms of speech. The exquisite finish of the old masters, the balanced period, apt antithesis, neat epigrammatic turn of language, the finished collocation of sentences, were to them an unknown tongue. The only style they would affect was "the humile dicendi genus."

When prosecuting Francia for high treason, the Attorney-

General informs the jury "that the defendant lives in Fetter Lane, and *goes for a Jew!*" In defending Layer, Mr. Hungerford says, "It will best become me to draw the matter in debate to a single point, and thereby to give ease to your lordships and the jury!" Serjeant Cheshire stated the case against Arnold for shooting at Lord Onslow, and disclaimed eloquence as if it were invidious and deceptive. "His Majesty hath given directions to have his own servants appear in this prosecution to see that right be done; and if we make out this to be the fact, there is no need of rhetoric or flourish of words to deceive you, nor I believe of any thing *to work up* your passions!"

By a strange and perverse anomaly, counsel were not permitted to speak for prisoners (high treason only excepted) in cases of life and death, though they might plead by the hour in matters of a halfpenny value. A merciful forbearance probably dictated this severe abstinence from the arts of persuasion; but the error of the system brought its deserved punishment in taming down to prosaic dulness the inspiration of the forensic orator, in freezing the pathetic, and vulgarising the sublime.

The Honourable Mr. Murray and Charles Yorke form, indeed, brilliant exceptions to the general deadness; but it was reserved for the genius of Erskine to pour a new light upon the courts, to refine, elevate, and electrify his audience. He coerced the sympathies of jurors as by some potent spell, and in answer to his impassioned appeal, "Give me your hearts!" they surrendered them at discretion to the great magician. Addressing himself with all his soul and strength to the vindication of a prisoner struggling for life, he enhanced the power of a pleader by adding to it the zeal and energy of a friend, ennobling advocacy with classic and apt expressions, and invested the law with human sympathies by making it speak the language of the affections. Redeeming the art from that slough of despond into which it had sunk, this first of English advocates attained that refinement of skill which is concealed by its own perfection. A higher character and purer idiom have been impressed by his signet on all appeals of the bar; and since his defence of Stockdale,

of Hardy, and of Hadfield, the last and greatest effort of his eloquence, there has vanished into thin air the most miserable web of sophistry ever woven, even though it caught for a moment the assent of Goldsmith and Niebuhr, that eloquence is unsuited to a court of justice. How many mighty combatants in the forum have since, though with less strength and an aim less exactly poised, thrown the enchanted spear! Dallas, Law, Scarlett, Brougham, Denman, Campbell, Kelly, Thesiger, Cockburn, Talfourd, and other men of renown, at once crowd on the memory. Fired with a spirit of generous rivalry, the members of the Irish and Scottish law-courts have pressed forward in the race of eloquence to win the *spolia opima*, and keep the van: Curran, Plunket, Bushe, Whiteside, in the one country; Cockburn, Jeffrey, Robertson, in the other, have performed feats of oratorical skill and power surpassing all former efforts. The lawyer of Westminster Hall, of the Four Courts, of the Outer and Inner House, stands on a vantage ground which, before Erskine's day, no counsel had ever attained.

Thanks to his genius, it is impossible again to descend to that dead level, that chilling mediocrity of speech, and thought, and feeling, to which the bar had previously sunk. But there is, we fear, some reason to suspect that the cause of true, vivid, commanding eloquence has receded, and is receding — that the spring tide of bright thoughts has passed, that a reflux in the stream of eloquence has set in, and that the same high mark may not be reached again.

The stress of business, and anxiety to turn to advantage every moment of time, have tended to lower the tone, and reduce the standard of modern forensic oratory, and the rule which strictly confines the speech to the issues, regarding nothing but the verdict, however good for the client, may not unfrequently be found injurious to the speaker. His determination to consult the tastes of those whom he would fain persuade, and sacrifice every thing to propitiate their favour, the art of Scarlett and Campbell, and other winners of verdicts, has the same depressing influence as the law of gravitation, and imbrues the modern style with prosaic flatness, rejecting ornament, shrinking from all classical allusion, too

simple for metaphor. As it would argue the extreme of credulity to imagine for a moment that any chance could have made the twelve honest men in the jury-box poetical, the rough-and-ready speaker, who seeks to conform to their will and pleasure, rejoices in epithets more strong than choice; in jokes and banter, the less refined the better appreciated; and, that he may be fully understood by persons of inert faculties, and apt to wander, is copious of words, without troubling himself as to their exact propriety, and much addicted to repetition.

Our legal oratory has increased, if not in poetical fervour and highly wrought power, in fulness and in length. The four times reiterated argument addressed to the Court of King's Bench, because there were four learned lords to convince, appears no inapt precedent for appeals to the more numerous and less observant hearers in the jury-box; and to persons of plain understanding, plain arguments are addressed in plain and popular language.

According to the just censure of an accomplished critic, Lord Brougham, "Lawyers affect too much of late, dryness and hardness. Their promiscuous auditory tempt to bad diction and false taste. They dread the charge of theatrical display; they are met for business. The jury are to decide questions of fact, not to have their fancy charmed with choice figures, or their taste gratified with exquisite diction, or their ears tickled with harmonious numbers." Too sensitive to the defects of what has been termed the Irish school, they become tame in their anxiety not to be deemed theatrical; and have too salutary a dread of bombast to approach the confines of the sublime. It would be well for the speakers and audience if the modern lawyer had more red-letter days in his calendar, in which to expatiate without restraint, — were he now and then to diverge from the beaten and dusty track, for the recreation of others and himself to take the more picturesque but circuitous path, which

"'Winds round the corn-fields, and the hill of vines.'"

It is pleasant, for the remarkable contrast which its perusal presents, to read such an eloquent and imaginative speech as that of Serjeant Talfourd in defence of Mr. Moxon; to

linger over terms of thought and expression which discourse most eloquent music, and whose sweet cadences we now regret to part with the more freely, as the echos of the advocate will be heard no more.

His failure to convince the jury entails no discredit. On the same theme Erskine had failed before; and it is perchance not to be lamented, as the warning may work a salutary caution and restraint on publishers in collecting the works of infidel dreamers, whether in prose or verse. But, entwined with a clear and excellent argument, the best defence that could be urged, we have a speech persuasive and mellifluous, teeming with poetical illustrations, running over with images of grace, rich to gorgeousness in diction: —

"Musæo spargens cuncta lepore."

The finished production of this accomplished professional artist deserves to be preserved for its eloquent rebuke to the homely style of common advocacy; and, if perchance redundant with ornament, is yet "a gem of purest ray serene." We treasure it as a rich specimen of the higher order of eloquence, worthy of one who has composed in "Ion" the most beautiful and best acting tragedy of modern days; who in his measure to amend the law of copyright made, according to the judgment of the Speaker Abercrombie, the best speech he had ever listened to; and, in his reply for the prosecution on the trial of the chartist Cooper, on the tenth evening of a most protracted trial, so fascinated the special jurors, that some declared they would have waited even another day to have heard such another oration.

The pathetic and forcible arguments by which Serjeant Talfourd justified the intentions of Mr. Moxon would doubtless have succeeded in screening him from punishment, had not the prosecutor prudently chosen to abandon all further proceedings on payment of his costs. We may rejoice in the wise determination not to harass an unintentional offender, without impugning the propriety of the verdict.

Asterisks are better after all than the distinction sought for. The publication of the author's complete works, containing such objectionable passages as those indicted, even though in-

tended merely to show the change of mind and feeling in Shelley for the use of the student, and deposit in a library, embalms infidelity; the collection of the obnoxious lines, when printed by themselves in a cheap form and distributed at a penny a head, exposes it.

Strange that one who sought to defecate the world of crime and misery should commence his eccentric career by seeking to exclude the source of light from his planetary system! that a poet on Mont Blanc, amid the wonders of creation, should dare to write himself down an atheist; that a fond parent should indulge in reveries which might shock and mar for ever the pious feelings of his child. The just grounds for crushing with the strong arm of the law all railings against the Deity and his Word are laid down by the Attorney-General in his prosecution of Daniel Isaac Eaton (State Trials, vol. xxxi. p. 85.), and by Lord Campbell in his speech against Hetherington. The graceful apology of Serjeant Talfourd will not militate with these arguments.

In the month of April, 1840, an indictment was preferred against Mr. Henry Hetherington, a bookseller in the Strand, at the instance of the Attorney-General, for selling certain numbers of a work entitled "Haslam's Letters to the Clergy of all Denominations," sold each at the price of *one penny*, and charging them as libels on the Old Testament. The cause came on to be tried before Lord Denman, in the Court of Queen's Bench, on 8th December, 1840, when the defence was conducted, with great propriety and talent, by the defendant himself, who rested it mainly on a claim of unqualified right to publish all matters of opinion, and on the argument, that the work charged as blasphemous came fairly within the operation of that principle. Mr. Hetherington was, however, convicted, and ultimately received judgment, under which he sustained an imprisonment of four months in the Queen's Bench prison. While this prosecution was pending, Mr. Hetherington appears to have adopted the design of becoming in his turn the prosecutor of several booksellers for the sale of the complete edition of Shelley's

Works, which had been recently issued by Mr. Moxon in a form similar to that in which he had published the collected works of the greatest English poets. He accordingly commissioned a person named Holt, then a compositor in his employ, to apply for the work at the shops of several persons eminent in the trade, and thus succeeded in obtaining copies from Mr. Moxon, from Mr. Fraser, and from Mr. Otley, or rather from the persons in their employ. On the sales thus obtained, indictments were preferred at the Central Criminal Court against the several vendors, which were removed by *certiorari* at the instance of the defendants. Mr. Moxon felt that, as the original publisher of the edition, he ought to bear the first attack; and therefore, although some advantage might have been gained by placing the case of a mere vendor before his own, he declined to use it, and entered his own cause the first of the series, which came on for trial on Wednesday June 23rd. The indictment against Mr. Moxon, which the others exactly resembled, charged that he, "being an evil disposed and wicked person, disregarding the laws and religion of this realm, and wickedly and profanely devising and intending to bring the Holy Scriptures and the Christian religion into disbelief and contempt, unlawfully and wickedly, did falsely and maliciously publish a scandalous, impious, profane, and malicious libel of and concerning the Christian religion, and of and concerning the Holy Scriptures, and of and concerning Almighty God, in which were contained certain passages charged as blasphemous and profane." It then set forth a passage in blank verse, beginning, — "They have three words! Well tyrants know their use, well pay them for the loan, With usury torn from a bleeding world! — God, Hell, and Heaven;" and, after adding an innuendo, meaning thereby that God, Hell, and Heaven were merely words, proceeded to recite a few more lines, applying very coarse and irreverent, but not very intelligible comments to each of those words. It then charged, that the libel contained, in other parts, two other passages, also in verse, and to which the same character may be justly applied. It lastly set forth a passage of prose from the notes, the object of which seems to be to assert, that the belief in the plurality

of worlds is inconsistent with "religious systems," and with "deifying the principle of the universe;" and from which, after speaking in very disrespectful terms of the statements of Christian history as "irreconcileable with the knowledge of the stars," concludes with the strange inconsistency pointed out by Lord Denman in his charge, (if the author's intention was to deny the being of God), "The works of his fingers have borne witness against them."

The case for the prosecution was opened by Mr. Thomas, with a judicious abstinence from any remark on the motives or object of the prosecutor, and without informing the jury who the prosecutor was. He stated several cases and dicta to establish the general proposition, that a work tending to bring religion into contempt and odium, is an offence against the common law, and among other precedents, that of Mr. Hetherington; read, besides the indicted passages, several others of a similar character, all selected from the poem of "Queen Mab;" eulogised the genius of Shelley; and fairly admitted the respectability of the defendant; and concluded by expressing the satisfaction he should feel if the result of this trial were to establish that no publication on religion should be a subject for prosecution in future. He then called Thomas Holt, who proved the purchase of the volume for twelve shillings, at Mr. Moxon's shop; and who also proved, on cross-examination, that he made the purchase of this and other copies at the desire of Mr. Hetherington, whom he understood to be the prosecutor in this and the succeeding cases.

The fact of publication being proved, Mr. Serjeant Talfourd thus addressed the special jurors for the defence:—

"It has sometimes been my lot to express, and much oftener to feel, a degree of anxiety in addressing juries, which has painfully diminished the little power which I can ever command in representing the interests committed to my charge; but never has that feeling been so excited, and so justified, by any occasion as that on which it is my duty to address you. I am called from the court in which I usually practise, to defend from the odious charge of blasphemy one with whom I have been acquainted for many years — one whom I have always believed incapable of wilful offence towards God, or

towards man — one who was introduced to me in early and happy days, by the dearest of my friends who are gone before me — by Charles Lamb — to whom the wife of the defendant was as an adopted daughter; and who, dying, committed the interests which he left her in the products of his life of kindness to my charge. Would to God that the spirit which pervaded his being could decide the fate of this strange prosecution — I should only have to pronounce his name and to receive your verdict.

"Apart from these personal considerations, there is something in the nature of the charge itself, however unjustly applied to the party accused, which must depress a Christian advocate addressing a Christian jury. On all other cases of accusation, he would implore the jurors, sworn to decide between the accuser and the defendant, to lay aside every prepossession — to forget every rumour — to strip themselves of every prejudice — to suppress every affection, which could prevent the exercise of a free and unclouded judgment; and having made this appeal, or having forborne to make it as needless, he would regard the jury-box as a sacred spot, raised above all encircling influences, to which he might address the arguments of justice and mercy, with the assurance of obtaining a decision, only divested of the certainty of unerring truth by the imperfection of human evidence and of human reason. But in this case you cannot grant — I cannot ask — the cold impartiality which on all other charges may be sought and expected from English juries. Sworn on the Gospel to try a charge of wickedly and profanely attempting to bring that Gospel, and the holy religion which it reveals, into disbelief and contempt, you are reminded even by that oath, if it were possible you could ever forget, of the deep, the solemn, the imperishable interest you have in those sacred things which the defendant is charged with assailing. The feelings which such a charge awakens are not like those political differences which it is delightful sometimes to forget or to trample on; — or those local partialities which it is ennobling to forsake for a wider sphere of contemplation — or those hasty opinions which the daily press, in its vivid course, has scattered over our thoughts, and which we are proud sometimes to bring to the test of

dispassionate reflection; — or those worldly interests which, if they sway the honourable mind at all, incline it to take part against them; — and the emotions which this charge enkindles are entwined with all that endears the past and peoples the future, with all that renders this life noble, by enriching it with the hope of that which is to come. If the passages which have been read to you — torn asunder from the connection in which they stand — regarded without reference to the time, the object, the mode of their publication, — should array you at this moment almost as plaintiffs, personally wronged and insulted, against their publisher, I must not complain; for I shall not be provoked, even by the peculiarity of this charge, to defend Mr. Moxon by a suggestion which can violate the associations which are intertwined with all that is dear to you. He would rather submit to the utmost consequences which the selfish recklessness of this prosecution could entail, if you should sanction, and the court hereafter should support, its aim; he would rather be severed from the family whom he cherishes, and from the society of the good and the great, in our literature, which he is privileged to share; than he would obtain immunity by a recourse to those weapons which the prosecutor would fain present to his choice. Neither will I, notwithstanding the anticipation of my learned friend, ask you to palter with your consciences, and, because you may doubt or deny the policy of the law which is thus set in action, invite you to do other than administer justice according to your oath and your duty. I take my stand on Christian ground; I base my defence on the recognised law; and if I do not show you that the Christianity which the prosecutor most needlessly presumes to vindicate, and the law which with unhallowed hands he is striving to pervert, justify your verdict of acquittal, I am content that you should become the instruments of his attempt to retort the penalties of his own sentence on one who never wronged him even in thought — that you should aid him to render the law under which he has suffered, odious, by sanctioning the odious application which he contemplates; and that at his bidding you should scatter through the loftiest and serenest paths of literature,

distress, and doubt, and dismay, awarding him that success which, 'if not victory, is yet revenge.'

"The charge which Mr. Moxon is called upon to answer is, that with a wicked intention to bring the Holy Scriptures and the Christian religion into contempt, he published the volume which is in evidence before you, and which is characterised as a libel on that religion, on the Scriptures, and on Almighty God. I speak advisedly when I say *the whole volume is thus indicted*; it must be so considered in point of justice; it is so charged in point of form. The indictment, indeed, sets forth four passages, torn violently asunder from their context; yet it does not charge them as separate libels, but as portions of one 'impious, blasphemous, profane, and malicious libel,' in different parts of which the selected parts are found. Now, these are not all to be found even in one poem; for, the first three being in poetry, the last is taken from a mass of prose appended to the first poem of 'Queen Mab,' and intervening between it and a poem entitled 'Alastor,' which is the next in the series. And if this were not the form of the record, can it be doubted that, in point of justice, the scope, the object, the tendency of the entire publication, must be determined before you can decide on the guilt or innocence of the party who has thus published the passages charged as blasphemous? Supposing some question of law should be raised on the sufficiency of the indictment in which they are inserted, and they should be copied necessarily for the elucidation of the argument in one of the reports in which the decisions of this court are perpetuated; would the reporter, the law-bookseller, the officer of the court, who should hand the volume to a barrister, be guilty of blasphemy? Or if they should appear in some correct report, partaking of a more popular form, and that report should be indicted as containing them, what form would the question of the guilt or innocence of the publishers assume? Would it not be, whether he had been honestly anxious to lay before the world the history of an unexampled attempt to degrade and destroy the law under pretence of asserting it; or whether he was studious to disseminate some fragments of strange and fearful audacity, and had professed to report an extraor-

dinary trial only as a pretext to cover the popular dissemination of blasphemy? And would not the form, the commentary, the occasion, the price, all be material in deciding whether the work were laudable or guilty? whether, as a whole, it tended to good or to evil? These passages, like details and pictures in works of anatomy and surgery, are either innocent or criminal, according to the accompaniments which surround them, and the class to whom they are addressed. If really intended for the eye of the scientific student, they are most innocent; but if so published as to manifest another intention, they will not be protected from legal censure by the flimsy guise of science. By a similar test let this publication be judged. If its whole tenor lead you to believe that the dissemination of irreligious feelings was its object, — nay, that such will be its natural consequence, — let Mr. Hetherington have his triumph; but if you believe that these words, however offensive, when abstractedly taken from part of a great intellectual and moral phenomenon, which may be disclosed to the class of readers who alone will purchase the volume, not only without injury, but to their instruction, you will joyfully find Mr. Moxon as free from blasphemy in contemplation of the strictest law, as I know he is in purpose and in spirit.

"The passages selected as specimens of the indicted libel are found in a complete edition of Percy Bysshe Shelley, a work comprising more than twenty thousand lines of verse, and occupy something less than the three-hundredth part of the volume which contains them. The book presents the entire intellectual history, — true and faithful because traced in the series of those works which were its events, — of one of the most extraordinary persons ever gifted and doomed to illustrate the nobleness, the grandeur, the imperfections, and the progress of human genius, whom it pleased God to take from this world while the process harmonising his stupendous powers was yet incomplete, but not before it had indicated its beneficent workings. It is edited by his widow, a lady endowed with great and original talent, who, as she states in her preface, hastens 'to fulfil an important duty, that of giving the productions of a sublime genius to the world with

all the correctness possible, and of, at the same time, detailing the history of these productions as they sprang warm and living from his heart and brain.' And, accordingly, the poems are all connected together by statements as to the circumstances under which they were written, and the feelings which inspired them. The 'alterations (says Mrs. Shelley) his opinions underwent ought to be recorded, for they form his history.'

"The first of these works is a poem, written at the age of eighteen, entitled 'Queen Mab;' a composition marked with nothing to attract the casual reader—irregular in versification, wild, disjointed, visionary; often difficult to be understood even by a painful student of poetry, and sometimes wholly unintelligible even to him; but containing as much to wonder at, to ponder on, to weep over, as any half-formed work of genius which ever emanated from the vigour and the rashness of youth. This poem, which I shall bring before you presently, is followed by the marvellous series of works of which 'Alastor,' 'The Revolt of Islam,' the 'Prometheus Unbound,' and 'The Cenci' form the principal, exhibiting a continuous triumph of mellowing and consecrating influences, down to the moment when sudden death shrouded the poet's career from the observation of mortals. Now, the question is, whether it is blasphemy to present to the world —say rather to the calm, the laborious, the patient searchers after wisdom and beauty, who alone will peruse this volume —the awful mistakes, the mighty struggles, the strange depressions, and the imperfect victories of such a spirit, because the picture has some passages of frightful gloom. I am far from contending that every thing which genius has in rashness, or in wantonness produced, becomes, when once committed to the press, the inalienable property of mankind. Such a principle, indeed, seems to be involved in an argument which was recently sanctioned by the authority of a cabinet minister, more distinguished even as a profound thinker, and an eloquent and accomplished critic, than by political station. When I last urged the claim of the descendants of men of genius to be the guardians of their fame, as well as the recipients of their attendant rewards, I was met with denial, on

the plea that, from some fastidiousness of taste, or some over-niceness of moral apprehension, the hereditary representatives of a great writer may cover his works with artificial oblivion. I have asked, whether, if a poet has written

"Some line which, dying, he may wish to blot,"

he shall not be allowed by the insatiate public to blot it dying; and I have asked in vain! Fielding and Richardson have been quoted as writers whose works, multiplying as they will through all time the sources of innocent enjoyment, might have been suppressed by some too dainty moralist. Now, admitting that the tendency of Fielding's works, taken as a whole, is as invigorating as it is delightful, I fear there are chapters which, if taken from their connection—apart from the healthful atmosphere in which their impurities evaporate and die—and printed at some penny cost for dissemination among the young, would justly incur the censure of that law, which has too long withheld its visitations from those who have sought a detestable profit, by spreading cheap corruption through the land. It may be true, as Dr. Johnson ruled, that Richardson 'had taught the passions to move at the command of virtue,' and, as was recently asserted, that Mrs. Hannah More first learned from his writings those principles of piety by which her life was guided, but (to leave out of consideration 'The Adventures of Pamela,' which must sometimes have put Mrs. Hannah More to the blush,) I fear that selections might be made, even from the greatest of all prose romances, 'Clarissa Harlowe,' which the Society for the Suppression of Vice would scarcely endure. Do I wish them therefore suppressed? No! Because in those massive volumes the antidote is found with the bane; because the effect of Lovelace's daring pleas for vice, and of pictures yet more vicious, is neutralised by the scenes of passion and suffering which surround them; because the unsullied image of heroic purity and beautiful endurance rises fairer from amidst the encircling pollutions, and conquers every feeling but those of admiration and pity. Yet if detached scenes were, like these passages of Shelley, selected for prosecution, how could they be defended but,

like them, by reference to the spirit, and intent, and tendency of the entire work from which they were torn? And yet the defence would be less conclusive than that which I now offer; as descriptions which appeal to passion are far less capable of correction by accompanying moralities, than the cold speculations of a wild infidelity by the considerations which the history of their author's mind supplies. In the wise and just dispensations of Providence, great powers are often found associated with weakness or with sorrow; but when these are not blended with the intellectual greatness they countervail, but merely affect the personal fortunes of their possessors—as when a sanguine temperament leads into vicious excesses—there is no more propriety in unveiling the truth, because it is truth, than in exhibiting the details of some physical disease. But when the greatness of the poet's intellect contains within itself the elements of tumult and disorder—when the appreciation of the genius in all its divine relations, and all its human lapses, depends on a view of the entire picture, must it be withheld? It is not sinful Elysium, full of lascivious blandishments, but a heaving chaos of mighty elements, that the publisher of the early productions of Shelley unveils. In such a case, the more awful the alienation, the more pregnant with good, will be the lesson. Shall this life, fevered with beauty, restless with inspiration, be hidden? or, wanting its first blind but gigantic efforts, be falsely because partially revealed? If to trace back the stream of genius from its greatest and most unearthly breadth to its remotest fountain is one of the most interesting and instructive objects of philosophic research, shall we, when we have followed that of Shelley through its majestic windings, beneath the solemn glooms of 'The Cenci,' through the glory-tinged expanses of 'The Revolt of Islam,' amidst the dream-like haziness of 'Prometheus,' be forbidden to ascend with painful steps its narrowing course to its farthest spring, because black rocks may encircle the spot whence it rushes into day, and demon shapes—frightful, but powerless for harm—may gleam and frown on us beside it?

"Having thus endeavoured to present to you the foundation

of my defence, that the volume in which these passages appear is in its substance historical, and that, so far from being adopted by the compiler, they are presented as necessary to historical truth, I will consider the passages themselves, and the poem in which they are found, with a view to inquire whether they are of a nature capable of being fairly regarded as innoxious in their connection with Shelley's life. Admitting, as I do, that, if published with an aim to commend them to the reader as the breathings or suggestions of truth — nay, that if recklessly published in such manner as to present them to the reader for approval, they deserve all the indignation which can be lavished on them; I cannot think even then they would have power to injure. They appeal to no passion; they pervert no affection; they find nothing in human nature, frail as it always is, guilty as it sometimes becomes, to work on. Contemplated apart from the intellectual history of the extraordinary being who produced them, and from which they can never be severed by any reader of this book, they would excite no feelings but those of wonder at their audacity and pity for their weakness. Not only are they incapable of awakening any chords of evil in the soul, but they are ineffectual even to present to it an intelligible heresy. 'We understand a fury in the words; but not the words.' What do they import? Is it atheism? or is it mad defiance of a God by one who believes, and hates, yet does not tremble? To the first passage, commencing, 'They have three words — God, Hell, and Heaven,' the prosecutor does not venture to affix any meaning at all, but tears them from their context, and alleges that they are part of a libel on the Holy Scriptures, though there is no reference in them to the Bible or to any Scripture doctrine; nor does the indictment supply any definite meaning or reference to explain or to answer. To the second paragraph,—

> "'Is there a God? — ay, an Almighty God,
> And vengeful as almighty! Once his voice
> Was heard on earth; earth shudder'd at the sound:
> The fiery visag'd firmament express'd
> Abhorrence, and the grave of nature yawn'd
> To swallow all the dauntless and the good

'That dared to hurl defiance at his throne,
Girt as it was with power'——

the indictment does present a most extended innuendo: 'Thereby meaning and referring to the Scripture history of Korah, Dathan, and Abiram, and meaning that the said Korah, Dathan, and Abiram were dauntless and good for daring to hurl defiance at the throne of Almighty God.' This is indeed a flight of the poetry of pleading — a construction which you must find as the undoubted sense of the passage, before you can sustain this part of the accusation. But again, I ask, is there any determinate meaning in these wild and whirling words? Are they more than atoms of chaotic thought not yet subsided into harmony, over which the spirit of love has not yet brooded, so as to make them pregnant with life, and beauty, and joy? But suppose for a moment they nakedly assert atheism: never was there an error which, thus incidentally exhibited, had less power to charm. How far it is possible that such a miserable dogma, dexterously insinuated into a perplexed understanding or a corrupted heart, may find reception, I will not venture to speculate; but I venture to affirm that, thus nakedly presented as the dream of a wild fancy, it can at most only glare for a moment, a bloodless phantom, and pass into kindred nothing! Or do the words rather import belief in a God, the ruling power of the universe, yet an insane hatred of his attributes? Is it possible to contemplate the creature of a day standing up amidst countless ages — like a shadowy film among the confused grandeur of the universe — thus propelled, with any other feelings than those of wonder and pity? Or do these words merely import that the name and attributes of the Supreme Being have been abused and perverted 'by the oppressors of mankind,' for their own purposes, to the misery of the oppressed? Or do they vibrate and oscillate between all these meanings, so as to leave the mind in a state of perplexity, balancing and destroying each other? In either case they are powerless for evil. Unlike that seductive infidelity which flatters the pride of the understanding by glittering sophistry, or that still more dangerous infidelity which gratifies its love of power by bitter sarcasm, or that most

dangerous of all, which perverts the sensibilities and corrupts the affections, it resembles that evil of which Milton speaks when, with a boldness which the fastidious might deem profane, he exclaims —

> " ' Evil into the mind of God or man
> May come and go, so unapproved, and leave
> No spot or blame behind.'

" If, regarded in themselves, these passages were endowed with any power of mischief, the manner in which they are introduced in the poem, or rather phantom of a poem, of ' Queen Mab,' must surely neutralise them.

" Now, when it is proved that this poem, thus containing the doctrine of immortality, is presented with the distinct statement that Shelley himself in mature life departed from its offensive dogmas, — when it is accompanied by his own letter, in which he expresses his wish for its suppression, — when, therefore, it is not given even as containing his deliberate assertions, but only as a feature in the development of his intellectual character, surely all sting is taken out of the rash and uncertain passages which have been selected as indicating blasphemy ! But is it not antidote enough to the poison of a pretended atheism, that the poet, who is supposed to-day to deny Deity, finds Deity in all things ?

" I cannot proceed with this defence without feeling that I move tremulously among sacred things, which should be approached only in serene contemplation ; that I am compelled to solicit your attention to considerations more fit to be weighed in the stillness of thought than amidst the excitements of a public trial ; and that I am able only to suggest reasonings which, if woven into a chain, no strength of mine could utter, nor your kindest patience follow. But the fault is not mine. I cannot otherwise even hint the truth — the living truth — of this case to your minds, as it fills and struggles in my own, or protect my client and friend from a prosecution without parallel in our legal history. If the prosecutor, in return for his own conviction of publishing some cheap and popular work of alleged blasphemy, prepared, calculated, and intended by the author to shake the religious

principles of the uneducated and the young, has attempted to assail the efforts of genius, and to bring into question the relations, the uses, the tendencies of the divinest faculties, I must not shrink from entreating you to consider those bearings of the question which are essential to its justice. And if you feel unable fully to examine them within the limits of a trial and in the atmosphere of a court of justice, yet if you feel with me that they are necessary to assist decision, you cannot doubt what your duty to the defendant and to justice is on a criminal charge. Pardon me, therefore, if I now seek to show you, by a great example, how unjustly you would deal with so vast and so divine a thing as the imagination of a poet, if you were to take his isolated passages which may seem to deal too boldly with sacred things, and, without regard to the process of the faculty by which they are educed, to brand them as the effusions of a blasphemous mind, or as tending to evil issues. That example will also show you how a poet, devoting the noblest powers to the loftiest themes, when he ventures to grapple with the spiritual existences revealed by the Christian faith, in the very purpose of vindicating 'the ways of God to men,' may seem to incur a charge like the present, and with as much justice, and may be absolved from it only by nice regard to the tendencies of the divine faculty he exerts. I speak not of a 'marvellous boy,' as Shelley was at eighteen, but of Milton in the maturity of his powers, when he brought all the 'spoils of time,' and the clustered beauty hoarded through a long life, to the deliberate construction of a work which should never die. His case is the converse of that of Shelley. He begins from an opposite point—he falls into an opposite error; but he expatiates in language and imagery out of which Mr. Hetherington might shape a charge as spacious as that which he has given you to decide. Shelley fancies himself irreligious, and everywhere falters or trembles into piety. Milton, believing himself engaged in a most pious work, is led by the tendencies of his imagination to individualise, to adorn, to enthrone, the enemy of God, and to invest his struggles against Omnipotence with all the nobleness of a patriotic resistance to tyranny, and his suffer-

ing from Almighty justice with the graces of fortitude. Let it not be urged that the language which his Satan utters is merely to be regarded with reference to dramatic proprieties. It is attributed to the Being in whom the interest of his poem centres, and on whom admiration and sympathy attend as on a sufferer in the eternal struggle of right against power. Omnipotence becomes tyranny in the poet's vision, and resistance to its requisitions appears the more generous even because hopelessly vain. Before I advert to that language, and ask you to compare it with the expressions selected for prosecution, let me call to your recollection the grandeurs, nay, the luxuries of thought with which the 'Lost Archangel' is surrounded; the magic by which even out of the materials of torture dusky magnificence is created in his place of exile, beyond 'the wealth of Ormus and the Ind;' and the faded glory and unconquerable spirit attributed to those rebel legions which still sustain him in opposition to the Most High.

"Now, having seen how the great Christian poet has lavished all the glories of his art on the attendant hosts and personal investiture of the brave opponent of Almighty Power, let us attend to the language in which he addresses his comrade in enterprise and suffering, —

> "'Into what pit thou seest,
> From what height fallen, *so much the stronger proved*
> *He with his thunder;* and till then who knew
> The force of those dire arms? Yet not for those,
> Nor *what the potent victor, in his rage,*
> *Can else inflict,* do I repent or change:
> Though changed in outward lustre, that fix'd mind
> And high disdain from sense of injured merit,
> That with the Mightiest raised me to contend,
> And to the fierce contention brought along
> Innumerable force of spirits arm'd,
> That durst dislike his reign, and, me preferring,
> His utmost power with adverse power opposed
> In dubious battle on the plains of heaven,
> And shook his throne.'

"I might multiply passages of the same kind; but I dare only allude to the proposition made of assaulting the throne of God 'with Tartarean sulphur and strange fire, — his

own invented torments;' and to the address of Satan to the newly-created sun, in which he actually curses the love of God. Suppose that last passage introduced into this indictment, suppose that instead of the unintelligible lines beginning, 'They have three words, God, Hell, and Heaven,' we had these — 'Be then his love accursed,' with the innuendo, 'Thereby meaning the love of Almighty God,' how would you deal with the charge? How! but by looking at the object of the great poem of which those words are part; by observing how the poet, incapable of resting in a mere abstraction, had been led insensibly to clothe it from the armoury of virtue and grandeur, by showing that, although the names of the Almighty and Satan were retained, in truth other ideas had usurped those names, as the theme itself had eluded even Milton's grasp. I will not ask you whether you agree with me in the defence which might be made for Milton; but I will ask, do you not feel with me that these are matters for another tribunal? Do you not feel with me, that, except that the boldness of Milton's thoughts comes softened to the ears by the exquisite beauty of Milton's language, I may find parallels in the passages I have quoted from the Paradise Lost for those selected for prosecution from Queen Mab? Do you not feel with me that, as without a knowledge of the Paradise Lost, you could not absolve the publisher of Milton from the prosecution of 'some mute inglorious' Hetherington; so neither can you, dare you, convict Mr. Moxon of a libel on God and religion, in publishing the works of Shelley without having read and studied them all? If rashly you assail the mighty masters of thought and fantasy, you will, indeed, assail them in vain for the purpose of suppression, though not for the purpose of torture. All you can do is to make them suffer, as being human they are liable to corporal suffering; but, like the wounded spirits of Milton, 'they will soon close,' 'confounded, though immortal!'

"If, however, these are considerations affecting the exercise of human genius on themes beyond its grasp, which we cannot discuss in this place, however essential to the decision of the charge, there is one plain position which I will venture to assert; that the poetry which pretends to a denial of God,

or of an immortal life, *must* contain its own refutation in itself, and sustain what it would deny! A poet, though not one of the highest order, may 'link vice to a radiant angel;' he may diffuse luxurious indifference to virtue and to truth: but he cannot inculcate atheism. Let him strive to do it, and like Balaam, who came to curse, like him he must end in blessing! His art convicts him; for it is 'Eternity revealing itself in Time!' His fancies may be wayward, his theories absurd, but they will prove, no less in their failure than in their success, the divinity of their origin, and the inadequacy of this world to give scope to his impulses. They are the beatings of the soul against the bars of its clay tenement, which, though they may ruffle and sadden it, prove that it is winged for a diviner sphere! Young has said, —

'An undevout astronomer is mad;'

how much more truly might he have said, an atheist poet is a contradiction in terms! Let the poet take what range of associations he will — let him adopt what notions he may — he cannot dissolve his alliance with the Eternal. Let him strive to shut out the vistas of the future by encircling the present with images of exquisite beauty; his own forms of ideal grace will disappoint him with eternal looks, and vindicate the immortality they were fashioned to veil! Let him rear temples and consecrate them to fabled divinities; they will indicate in their enduring beauty, 'temples not made with hands, eternal in the heavens!' If he celebrates the delights of social intercourse, the festal reference to their fragility includes the sense of that which must endure; for the very sadness which tempers them, speaks the longing after that 'which prompts the eternal sigh.' If he desires to bid the hearts of thousands beat as one man at the touch of tragic passion, he must present 'the future in the instant,' — show in the death-grapple of contending emotions a strength which death cannot destroy — vindicate the immortality of affection at the moment when the warm passages of life are closed against it; and anticipate in the virtue which dares to die, the power by which 'mortality shall be swallowed up of life!' The world is too narrow for us. Time is too short for man; and the poet only feels the sphere

more inadequate, and pants for the 'All hail hereafter!' with more urgent sense of weakness than his fellows:

> "'Too, too contracted are these walls of flesh;
> This vital heat too cold; these visual orbs,
> Though inconceivably endow'd, too dim
> For any passion of the soul which leads
> To ecstacy, and, all the frigid bonds
> Of time and change disdaining, takes the range
> Along the line of limitless desires.'

"If this prosecution can succeed, on what principle can the publishers of the great works of ancient times, replete with the images of idolatrous faith, and with moralities only to be endured as historical, escape a similar doom? These are the works which engage and reward the first labours of our English youth,—which, in spite of the objections raised to them, practically teach lessons of beauty and wisdom—the sense of antiquity—the admiration of heroic daring and suffering, and refine and elevate their lives. It was destined, in the education of the human race, that imperfect and faint suggestions of truth, combined with exquisite perceptions of beauty, should in a few teeming years give birth to images of grace which, untouched by time, people the retreats which are sought by youthful toil, and make learning lovely. Why shall not these be brought, with the poetry of Shelley, within the range of criminal jurisdiction? Because, with all their beauty, they do not belong to the passions of the present time; because they hold their dominion apart from the realities which form the business of life; because they are presented to the mind as creations of another sphere, to be admired not believed. And yet without prosecution, without offence, one of the greatest and purest of our English poets, wearied with the selfishness which he saw pervading a Christian nation, has dared an ejaculating wish for the return of those old palpable shapes of divinity, when he exclaimed,—

> "'Great God! I'd rather be
> A pagan suckled in a creed outworn,
> So might I, standing on some pleasant lee,
> Have glimpses which may make me less forlorn,—
> Have sight of Proteus coming from the sea,
> Or hear old Triton blow his wreathed horn.'

And the fantasies of 'Queen Mab,' it must [illegible] imagination, are as harmless now as the [illegible] deities which Wordsworth thus invokes: 'Pure, [illegible] they were while their author lived; they have [illegible] by that touch of death which stopped the [illegible] teeming fancy of their fated author. They have no influence on living opinion, than that would of beauty which Shelley adverts, when he exclaims in 'Hellas,'

> "'But Greece and her [illegible] are
> Built below the tide of war,
> Based on the crystalline sea
> Of thought and its eternity.'

"Having considered this charge chiefly [illegible] I must not forget that the last passage [illegible] prosecutor is in prose, culled from the essay which was appended to the poem of 'Queen Mab,' disclaimed by the editor, disclaimed by Shelley long before he reached the prime of manhood, but rightly preserved, shocking as it seems in itself, as essential to the just contemplation of his moral and intellectual nature. They form the dark ground of a picture of surpassing interest to the philosopher. Here you have a poet whose fancies are most ethereal, struggling with a theory gross, material, shallow, imagine the great struggle by which the Spirit of the Eternal seeks to subdue the material world to its uses. His genius was pent up within the hard and bitter rind of his philosophy, as Ariel was in the rift of the cloven pine; and what wonder if a spirit thus entombed should send forth strange and discordant cries? But the words which those strange voices syllabled are recorded, will you say the record is a crime? I recollect in the speech of that great ornament of our profession, Mr. Erskine, an illustration of the injustice of selecting part of a conversation or of a book, and, because singly considered it is selfish, charging a criminal intent on the utterer or publisher, which if at first it may not seem applicable to this case, will be found essentially to govern it. He refers to the passage in the Bible, 'The fool hath said in his heart, There is no God,' and shows how the publisher of the Book of Psalms itself might be charged with atheism by the insertion of the latter division of the sentence. It is not [illegible]

the division of a sentence only that the context may be judged; but by the general intent of him who publishes what is in itself offensive, for the purpose of curious record —of controversy — of evidence — of example. The publisher of Shelley has not indeed said 'The fool hath said in his heart, There is no God;' but he has in effect said, 'The poet has tried to say with his lips, There is no God, but his genius and his heart belie his words!' What indeed does the publisher of Shelley's works virtually say when he thus presents to his readers this record of the poet's life and death? He says—Behold! here is a spectacle which angels may admire and weep over! Here is a poet of fancy the most ethereal—feelings the most devout—charity the most Christian—enthralled by opinions the most cold, hollow, and debasing! Here is a youth endowed with that sensibility to the beautiful and the grand which peoples his minutes with the perceptions of years; who, with a spirit of self-sacrifice which the oldest Christianity might exult in, if found in one of its martyrs, is ready to lay down that intellectual being — to be lost in loss itself—if by annihilation he could multiply the enjoyments and hasten the progress of his species, — and yet, with strange wilfulness, rejecting that religion in form to which in essence he is imperishably allied! Observe these radiant fancies, pure and cold as frostwork; how would they be kindled by the warmth of Christian love! Track those 'thoughts that wander through eternity,' and think how they would repose in their proper home! And trace the inspired but erring youth, poem after poem, year after year, month after month, how shall you see the icy fetters which encircle his genius gradually dissolve; the wreaths of mist ascend from his path; and the distance spread out before him peopled with human affections, and skirted by angels' wings! See how this seeming atheist begins to adore — how the divine image of suffering and love presented at Calvary, never unfelt, begins to be seen — and in its contemplation the softened, not yet convinced poet exclaims, in his 'Prometheus,' of the followers of Christ: —

> "'The wise, the pure, the lofty, and the just,
> Whom thy slaves hate for being like to thee!'

"And thus he proceeds, with light shining more and more towards the perfect day, which he was not permitted to realise in this world. As you trace this progress, alas! Death veils it, — veils it, not stops it; and this perturbed, imperfect, but glorious being is hidden from us 'Till the sea shall give up its dead!' What say you now to the book which exhibits this spectacle, and stops with this catastrophe? Is it a libel on religion and God? Talk of proofs of Divine existence in the wonders of the material universe, there is nothing in any, nor in all, compared to the proof which this indicted volume conveys! What can the telescope disclose of worlds, and suns, and systems, in the heavens above us, or the microscope detect in the descending scale of various life, endowed with a speech and a language like that which with Shelley, being dead, here speaks? Not even do the most serene productions of poets, whose faculties in this world have attained comparative harmony — strongly as they plead for the immortality of the mind which produced them — afford so unanswerable a proof of a life to come, as the mighty embryo which this book exhibits; — as the course, the frailty, the imperfection, with the dark curtain dropped on all! It is, indeed, when best surveyed, but the infancy of an eternal being; an infancy wayward but gigantic; an infancy which we shall never fully understand, till we behold its development, 'when time shall be no more;' when doubt shall be dissolved in vision; 'when this corruptible shall have put on incorruption, and when this mortal shall have put on immortality!'

"Let me, before I sit down, entreat you to ask yourselves where the course of prosecution will stop if you crown with success Mr. Hetherington's revenge. Revenge did I say? I recall the word. Revenge means the returning of injury for injury; an emotion most unwise and unchristian, but still human; the satisfaction of a feeling of ill-regulated justice, cherished by a heart which judges bitterly in its own cause. But this attempt to retaliate on one who is a stranger to the evil suffered — this infliction of misery for doing that which the prosecutor has maintained within these works the right of all men to do — has no claim to the savage plea of wild justice; but a poor, cruel, paltry injustice;

as bare of excuse as ever tyrant, above or below the opinion of the wise and good, ever ventured to threaten. Admit it power in this case — grant its right to select for the punishment of blasphemy, the exhibition of an anomaly as harmless as the stuffed aspic in a museum, or as its image on the passionless bosom of a pictured Cleopatra — and what ancient, what modern history shall be lent unchallenged to our friends? If the thousand booksellers who sell the 'Paradise Lost,' from the greatest publisher in London or Edinburgh, down to the proprietor of the little book-stall, where the poor wayfarer snatches a hasty glance at the grandeur and beauty of the poet, and goes on his way refreshed, may hope that genius will render to the name of Milton what they deny to that of Shelley; what can they who sell 'The History of the Decline and Fall of the Roman Empire' hope from the prosecutor of 'Queen Mab?' In that work are two celebrated chapters, sparkling with all the meretricious felicities of epigrammatic style, which, full of polished sarcasm against infant Christianity, are elaborately directed to wither the fame of its martyrs and confessors with bitterest scorn — two chapters which, if published at a penny each, would do more mischief than thousands of metaphysical poems; but which, retained in their appropriate place, to be sought only by the readers of history, may serve the cause of truth by proving the poverty of the spite by which it has been assailed, and find ample counterpoise in the sequel. The possibility that this history should be suppressed by some descendant of Gibbon, who might extravagantly suppose it his duty to stifle cold and crafty sneers, aimed at the first followers of Christ, was urged, and urged with success, against me when I pleaded for the right of those descendants to the fruits of the labours of their ancestor; yet if you sanction this attempt, any Hetherington may compel by law that suppression, the remote possibility of which has been accepted as a reason for denying to the posterity of the author a property in the work he has created! This work, invested with the peculiar interest which belongs to the picture of waning greatness, has recently been printed in a cheap form, under the sanction of a dignitary of the Established Church — a Christian poet of

the noblest aim — whose early genius was the pride of our fairest university, and who is now the honoured minister of the very parish in which we are assembled. If I were now defending Mr. Milman, of whose friendship I am justly proud, for this last and cheapest, and best edition of Gibbon, I could only resort to the arguments I am now urging for Mr. Moxon, and claim the benefit of the same distinction between the tendency of a book adapted to the promotion of infidelity, and one which, containing incidental matter of offence, is commended to the student with those silent guards which its form and accompaniments supply. True it is that Mr. Milman has accompanied the text with notes, in which he sometimes explains or counteracts the insinuations of the author; but what notes can be so effectual as that which follows 'Queen Mab,' in which Shelley's own letter is set forth, stating, on his authority, that the work was immature, and that he did not intend it for the general eye? Is not the publication of this letter by the publisher as decisive of his motive — not to commend the wild fancies and stormy words of the young poet to the reader's approval, but to give them as part of his biography, — as the notes of Mr. Milman are of that which no one doubts, his desire to make the perusal of Gibbon healthful? Prosper this attempt, and what a field of speculative prosecution will open before us! Every publisher of the works of Rousseau, of Voltaire, of Volney, of Hume, — of the classics, and of their translations — works regarded as innoxious, because presented in a certain aspect, and offered to a certain class, will become liable to every publisher of penny blasphemy who may suffer from, or hate, or fear the law; nor of such only, but of every small attorney in search of practice, who may find in the machinery of the Crown-office the facilities of extortion. Nor will the unjust principle you are asked to sanction stop with retaliation in the case of alleged blasphemy; the retailer of cheap lasciviousness, if checked in his wicked trade, will have *his* revenge against the works of the mighty dead, in which some tinge of mortal stain may unfortunately be detected. The printer of one of those penny atrocities, which are thrust into the hands of ingenuous youths when bound on duty or innocent plea-

sure, the emissaries of which — children often themselves — mount the chariot and board the steamboat to scatter that poison which may infect the soul as long as the soul shall endure — whom, to do this prosecutor justice, I know he disclaims — may obtain true bills of indictment against any man who has sold Horace, or Virgil, or Lucretius, or Ovid, or Juvenal — against all who have sold a copy of any of our old dramatists; and thus not only Congreve, and Farquhar, and Wycherley, but Fletcher, and Massinger, and Ford, and Webster, and Ben Jonson — nay, with reverence be it spoken, even Shakespeare, though ever pure in essence, may be placed at the mercy of an insect abuser of the press, unless juries have the courage and the virtue to recognise the distinction between a man who publishes works which are infidel or impure because they are infidel or impure, and publishes them in a form and at a price which indicate the desire that they should work out mischief, and one who publishes works in which evil of the same kind may be found, but who publishes them because, in spite of that imperfection, they are, on the whole, for the edification and delight of mankind, — between one who tenders the mischief for approbation, and one who exposes it for example. And are you prepared to succumb to this new censorship? Will you allow Mr. Hetherington to prescribe what leaves you shall tear from the classic volumes in your libraries? Shall he dictate to you how much of Lord Byron, a writer far more influential than Shelley, you shall be allowed to lend to your friends without fear of his censure? Shall he drag into court the vast productions of the German mind, and ask juries to decide whether the translators of Schiller, Wieland, and Lessing, dealing with sacred things with a boldness to which we are unused, are guilty of crime? Shall he call for judgment on that stupendous work, the 'Faust,' with its prologue in heaven, which has been presented by my friend Mr. Hayward, whose able assistance I have to-day, with happy vividness to English readers, — and ask a jury to take it into their hand, and at an hour's glance to decide whether it is a libel on God, or a hymn by genius to his praise? Do you not feel those matters are for other seasons, for another sphere? If so, will you, in the dark, without knowledge,

without evidence, sanction a prosecution which will, in its result, impose new and strange tasks on juries who may decide on other trials, which may destroy the just allowance accorded to learning even under absolute monarchies, and place every man who hereafter shall print, or sell, or give, or lend any one of a thousand volumes sanctioned by ages, at the mercy of any prosecutor who, for malice, for gain, or mere mischief, may choose to denounce him as a blasphemer? And now I commend into your hands the cause of the defendant, the cause of genius, the cause of learning, the cause of history, the cause of thought. I have not sought to maintain it by assailing the law as it has been expounded by courts and administered by juries, which, if altered, should be changed by the authority of the legislature, and neither by the violation of oaths, nor by the machinery which the prosecutor has employed to render it odious at the cost of those whom he himself contends to be guiltless; but I have striven to convince you that, by a just application of that law, you may hold this publication of the works of Shelley to be no crime. It has been fairly conceded that Mr. Moxon is a most respectable publisher; one who has done good service to the cause of poetry and wisdom; and one who could not intentionally publish a blasphemous work without treason to all the associations which honour his life. Beginning his career under the auspices of Rogers, the eldest of a great age of poets, and blessed with the continued support of that excellent person, who never broke by one unworthy line the charm of moral grace which pervades his works, he has been associated with Lamb, whose kindness embraced all sects, all parties, all classes, and whose genius shed new and pleasant lights on daily life; with Southey, the pure and childlike in heart; with Coleridge, in the light of whose Christian philosophy these indicted poems would assume their true character as mournful yet salutary specimens of power developed imperfectly in this world; and with Wordsworth, whose works, so long neglected or scorned, but so long silently nurturing tastes for the lofty and the pure, it has been Mr. Moxon's privilege to diffuse largely through this and other lands, and with

them the sympathies which link the human heart to nature and to God, and all classes of mankind to each other! Reject then in your justice the charge which imputes to such a man that, by publishing this book, he has been guilty of blasphemy against the God whom he reveres! Refuse to set the fatal precedent, which will not only draw the fame of the illustrious dead into question before juries, without time to investigate their merits; which may not only harass the first publishers of these works, but which will beset the course of every bookseller, every librarian, throughout the country with perpetual snares, and make our criminal courts the arenas for a savage warfare of literary prosecutions! Protect our noble literature from the alternative of being either corrupted or enslaved! Terminate those anxieties which this charge, so unprovoked, so undeserved, has now for months inflicted on the defendant and his friends, by that verdict of *not guilty*, which will disappoint only those who desire that cheap blasphemy should have free course, which the noblest, and purest, and most pious of your own generation will rejoice in, and for which their posterity will honour and bless you."

Lord Denman said "it was difficult to quit the captivating subject on which the learned Serjeant had addressed them with so much animation and eloquence, but he and the jury were bound to take the law as it had been handed down to them. The only question for their consideration was, whether in their opinion the work which had been made the subject of prosecution deserved the imputations that were cast upon it by the indictment, and whether the publisher had sent it forth deliberately into the world, knowing its character to be such. The purpose of the passage cited from 'Queen Mab' was, he thought, to cast reproach and insult upon what in Christian minds were the peculiar objects of veneration. It was not, however, sufficient that mere passages of such an offensive character should exist in a work in order to render the publication of it an act of criminality. It must appear that no condemnation of such passages appeared in the context. It had been said that the extraordinary poem in question was the production of a mere youth. Were the lines indicted cal-

culated to shock the feelings of any Christian reader? Were their points of offence explained, or was their virus neutralised by any remarks in the margin, by any note of explanation or apology? If not, they were libels on God, and indictable."

The jury, after deliberating for a quarter of an hour, declared the defendant Guilty.

NOTES TO THE TRIAL OF MR. MOXON.

Note 1.

At the most dead season of eloquence, 1739, there was published by Mr. Holmes "The Art of Rhetoric made easy, addressed to the Worshipful Company of Fishmongers, and containing the precepts, animadversions, remarks, and hints of Isocrates, Aristotle, Cicero, Quintilian, Longinus, &c.; whence may appear what grace and beauty are to be met with in Figures, what delight and extensive significancy are contained in Tropes, what nervous force and harmonious *pith* we experience in Repetitions or Turns."

"Omnia nos itidem depascimus aurea."

It is a curious work, but the Bar seem to have been deaf to the voice of the charmer, whilst, notwithstanding its dedication to Fishmongers, the tropes at Billingsgate seem more remarkable for pith than beauty.

Note 2.

Archbishop Whateley, in his preface to the Elements of Rhetoric, has cited "a declaration of the highest legal authority that Christianity is part of the law of the land; and, consequently, any one who impugns it is liable to prosecution. What is the precise meaning of the above legal maxim I do not profess to determine, having never met with any one who could explain it to me, but evidently the mere circumstance that we have Religion by law established does not of itself imply the illegality of arguing against that Religion." It seems difficult to render more intelligible a maxim which has perplexed so learned a critic. Christianity was pronounced to be part of the common law, in contradistinction to the ecclesiastical law, for the purpose of proving that the temporal courts, as well as the courts spiritual, had jurisdiction over offences against it. Blasphemies against God and Religion are properly cognizable by the law of the land, as they disturb the foundations on which the peace and good order of society rest, root up the principle of positive laws and penal restraints, and remove the chief sanctions for truth, without which no

question of property could be decided, and no criminal brought to justice. Christianity is part of the common law, as its root and branch, its mainstay and pillar, as much a component part of that law as the government and maintenance of social order. The inference of the learned Archbishop seems scarcely accurate, that all who impugn this part of the law must be prosecuted. It does not follow, because Christianity is part of the law of England, that every one who impugns it is liable to prosecution. The manner of and motives for the assault are the true tests and criteria. Scoffing, flippant, railing comments, not serious arguments, are considered offences at common law, and justly punished because they shock the pious no less than deprave the ignorant and young. The law is clearly laid down in 4 Blackstone, 59.; 1 Hawkins's Pleas of the Crown, c. 5.; 1 Viner's Abrid. p. 293.; 2 Strange, p. 834.; and 1 Ventris, 293. We may argue against the government by King, Lords, and Commons, but must not slander and revile them.

The meaning of Chief Justice Hale cannot be expressed more plainly than in his own words. An information was exhibited against one Taylor, for uttering blasphemous expressions too horrible to repeat. Hale, C. J., observed that "Such kind of wicked, blasphemous words were not only an offence to God and religion, but a crime against the laws, state, and government, and therefore punishable in the Court of King's Bench. For to say Religion is a cheat is to subvert all those obligations whereby civil society is preserved; that Christianity is part of the laws of England, and to *reproach* the Christian religion is to speak in subversion of the law." To remove all possibility of further doubt, the Commissioners on Criminal Law have thus clearly explained their sense of the celebrated passage: "The meaning of the expression used by Lord Hale that 'Christianity was parcel of the laws of England,' though often cited in subsequent cases, has, we think, been much misunderstood. It appears to us that the expression can only mean, either that as a great part of the securities of our legal system consist of judicial and official oaths sworn upon the Gospels, Christianity is closely interwoven with our municipal law; or that the laws of England, like all municipal laws of a Christian country, must, upon principles of general jurisprudence, be subservient to the positive rules of Christianity. In this sense Christianity may justly be said to be incorporated with the law of England, so as to form parcel of it; and it was probably in this sense that Lord Hale intended the expression should be understood. At all events, in whatsoever sense the expression is to be understood, it does not appear to us to supply any reason in favour of the rule, that arguments may not be used against it; for it is not criminal to speak or write either against the common law of England generally, or against particular portions of it, provided it be not done in such a manner as to endanger the public peace by exciting forcible resistance; so that the statement that Christianity is parcel of the law of England, which has been so often urged in justification of laws against blasphemy, however true it may be as a general proposition, certainly furnishes no additional argument for the propriety of

such laws." If blasphemy mean a railing accusation, then it is, and ought to be, forbidden.

NOTE 3.

The following judicious opinion of the Commissioners on Criminal Law, in their sixth report, will, we think, meet with general assent. "The course hitherto adopted in England respecting offences of this kind has been to withhold the application of the penal law, unless in cases where insulting or contumacious language is used, and where it may fairly be presumed that the intention of the offender is not grave discussion, but a mischievous design to wound the feelings of others, or to injure the authority of Christianity with the vulgar and unthinking by improper means. For although the law distinctly forbids *all* denial of the being and providence of God, or the truth of the Christian religion, works in which infidelity is professed and defended have been frequently published, and have undergone no legal question or prosecution; and it is only where irreligion has assumed the form of blasphemy in its true and primitive meaning, and has constituted an insult both to God and man, that the interference of the criminal law has taken place. There is no instance, we believe, of the prosecution of a writer or speaker who has applied himself seriously to examine into the truth in this most important of all subjects, and who, arriving in his own convictions at scepticism or even unbelief, has gravely and decorously submitted his opinions to others, without any wanton and malevolent design to do mischief. Such conduct, indeed, could not be properly considered as blasphemy or profaneness; and at the present day, a prosecution in such a case would probably not meet with general approbation. On the other hand, the good sense and right feeling of mankind have always declared strongly against the employment of abuse and ribaldry upon subjects of this nature, and although many judicious and pious persons have thought, with Dr. Lardner, that it was prudent and proper to allow great latitude to manner, the application of the penal law to cases of this kind has usually met with the cordial acquiescence of public opinion."

THE TRIAL

OF

DANIEL O'CONNELL, ESQ., M.P.

AND EIGHT OTHERS,

IN THE COURT OF QUEEN'S BENCH, IRELAND,

Michaelmas Term, 1843, and Hilary Term, 1844,

FOR CONSPIRACY.

Judges: The Right Hon. Edward *Pennefather*, Chief Justice, the Hon. Charles *Burton*, the Hon. Philip Cecil *Crampton*, the Right Hon. Louis *Perrin*.

Counsel for the Crown: The Right Hon. Thomas Berry Cusack *Smith*, Attorney-General, Richard Wilson *Greene*, Esq., Solicitor-General, Richard Benson *Warren*, Esq., Second Serjeant, George *Bennet*, Esq., Q. C., Abraham *Brewster*, Esq., Q. C., William Deane *Freeman*, Esq., Q. C., Henry *Martley*, Esq., Q. C., George *Tomb*, Esq., Q. C., Robert *Holmes*, Esq., John George *Smyly*, Esq., Matthew *Baker*, Esq., Joseph *Napier*, Esq.

Counsel for the Traversers: Richard *Moore*, Esq., Q. C., the Right Hon. R. Lalor *Sheil*, Q. C., John *Hatchell*, Esq., Q. C., Jonathan *Henn*, Esq., Q. C., Right Hon. David R. *Pigot*, Q. C., James Henry *Monahan*, Esq., Q. C., Gerald *Fitzgibbon*, Esq., Q. C., James *Whiteside*, Esq., Q. C., Francis *M'Donogh*, Esq., Q. C., Alexander *M'Carthy*, Esq., Edward *Clements*, Esq., James Stratherne *Close*, Esq., Thomas *O'Hagan*, Esq., James *O'Hea*, Esq., John *Perrin*, Esq., Sir Colman M. *O'Loghlen*, Bart.

A QUOTATION from Milton applied to the monster meetings, which the prosecution of O'Connell and the eight minor defendants sought to repress,—

> "Behemoth, biggest born of earth,
> Upheaved his vastness"—

will describe, not inappropriately, a trial, from the commencement to the close, in length, and extent, and importance, without precedent or parallel. The indictment filled fifty-eight folio pages—a very winding-sheet of law, charged fifty-eight overt acts committed between February 13th and October 9th, 1843, and occupied the Grand Jury five days before they could write upon it "a true bill." The Attorney-General took eleven hours in opening the case, and could scarcely have condensed his ample matter within a smaller space, as, in the magnitude and complexity of its details, and the range of time and space which the transactions traversed, his prosecution far transcended all former examples in the history of criminal jurisprudence. The counsel for the traversers and O'Connell himself spoke successively for eight days. The Solicitor-General, in his reply, absorbed two days and five hours; and the charge of the Lord Chief Justice seemed comparatively brief, as it only comprehended a day and a half. The Jury, after taking only five hours to agree in their verdict, required three or four more to settle it, that their finding might accord with the eleven counts of the indictment, and succeeded so well in their uncommon pains to render their meaning distinct, as to make the verdict null and void.

When the first Earl of Lonsdale brought an action at Carlisle, he started by retaining all the barristers on the Northern Circuit: the Traversers were not such extortionate monopolists, but modestly retained no more than nine Queen's Counsel and seven learned gentlemen in stuff! the Crown taking the field with twelve only. The magnitude of the topics to be discussed, and the national importance of the result, justified this extraordinary array of gentlemen of the long robe.

Upon the battle-field of the Four Courts was to be decided the momentous struggle between the population of the two countries for or against a repeal of the Union; and the result, like a question of peace or war, was watched, during the three months' delay that the Fabian policy of the Traversers interposed between the commencement of the prosecution and trial, with earnest curiosity and solicitude. Never, since the Peace, had so many couriers been despatched to Paris and Petersburgh as during the few weeks

that followed the actual commencement of the trial, that eventful 15th of January, when the Court of Queen's Bench was crowded with persons of distinction who had been fortunate enough to procure tickets of admission, and thousands thronged the doors. To represent *the fourth estate*, thirty reporters attended from London.

Mr. O'Connell proceeded, as if in triumphal procession, from his house in Merrion Square to the Court, accompanied by the Lord Mayor in his robes, bearing his wand of office, and escorted by a procession which comprehended forty carriages. On his arrival at the Hall, the air was rent with cries of "God bless him!" The mass of the population had identified themselves with his cause. The importance of the result could scarcely be overrated, for the trial and its consequences might affect the tranquillity of Europe. The Attorney-General for Ireland, Mr. T. B. Cusack Smith, an admirable lawyer in the third generation, (for his father had been a baron of the Exchequer, and his grandfather Master of the Rolls,) determined on proving the virtue of the common law, whether it was strong enough to put down what he considered a gigantic conspiracy to intimidate the government into a surrender of the Union, by the continuous collection of myriads of people, thousands of fighting men, unarmed, but resolute and demonstrative; who, according to O'Connell, had a perfect right to meet—as undoubtedly they had, and in congregating whom,—there lay the difficulty,—he boldly defied his accusers to prove a legal crime. The object sought to be attained by this Mammoth prosecution, and the vast expenditure of *matériel*, and time, and labour, and learning, which it involved, was truly national, to strike at the heart of an immense confederacy—to crush and put down with the strong hand of the law, a continuous systematic agitation, concerted with the object of overawing the government,—of making ministers start, as Mr. Sheil dramatically described it,—of alienating the body of the Irish people from the state by seditious songs, speeches, and paragraphs in newspapers—of coercing the legislature, by the silent menace of a giant's pleasure and a giant's strength, into a repeal of the Union. Even yet the fierce throes of national

excitement have not sufficiently subsided to allow in the majority a calm and dispassionate opinion; but, considering this as a mere question of law, distinct from technical objections to the indictment and errors on the record, the decision to which most lawyers have come appears to be that a conspiracy at common law did exist, and was legally proved.

The emancipation of the Roman Catholics had been yielded, as the Duke of Wellington declared, under the dread of seeing a country he loved visited with the unutterable horrors of civil war. The motives for concession were avowed, and acted on. It seemed like cause and effect to form a combination for demonstrating, by a collection of the masses, the demand of the Irish people for repeal, and compelling the prime minister to grant it against his better judgment, in defiance of the reason of the legislature under the pressure of panic, the agonies of fear.

The great ringleader made no secret of this being his real design. No statesman would dare to refuse what so much bone and sinew demanded. He would break no law, he would bring about peaceably and constitutionally the repeal of the Union; he would place Tipperary on a peaceful parade, and make it unsafe to refuse compliance with the people's wish. There should not be a single drop of blood shed. It would be worse than a crime, a wretched blunder, to be betrayed into violence. The fallacy of his reasoning lay in this, that so long as the peace was unbroken and the assembly could not be prosecuted as seditious, the law supposed no crime in those who concerted to collect it, to prevent the great council from exercising an independent voice, and to produce an unconstitutional terrorism in the minds of government. Had a number of persons combined to collect immense crowds round the two Houses of Parliament for the purpose of overawing their deliberations, the conspiracy would not have been denied; yet was the effect of "the million shout" at Tara, Longford, and Kilkenny, equally calculated to affect the strongest mind; and the guilt of those who concerted how best to collect the myriads at forty such meetings with the avowed object of checkmating the government by the show of physical might, equally clear.

The scheme of his peaceful campaign was admirably sketched

and adroitly executed by that veteran in agitation, who, perhaps more than any other, "wielded at will the fierce democracy." At the first meeting of the Loyal National Repeal Association, (*stat magni nominis umbra*, said the Chief Justice) on the 2nd of January, 1843, in the Corn Exchange, Dublin, the Cerberus of agitation, as Baron Smith described him, proclaimed that to be the Repeal Year; and extensive as the ridicule which accompanied the prophecy, were his profound arrangements for ensuring its fulfilment. Aided by the spirit-stirring songs and enthusiastic appeals of the *Nation* newspaper—

> "Be bold, united, firmly set,
> Nor flinch in word or tone;
> We'll be a glorious nation yet,
> Redeem'd—erect—alone!"

the rebel genius of Emmet or Wolf Tone might have brooded over and inspired the verse,—encouraged by large supplies from the sympathisers in America and France, and the steady increase of the weekly returns, now that people began to think their leader in earnest, and goaded on by *Young Ireland*, ardent, impulsive, eager for action, O'Connell commenced in March, at a meeting of the corporation (where a petition for dissolving the Union was agreed on), his system of agitation for Repeal. It was only by slow degrees, by hints and innuendoes, *sensim sine sensu*, that he revealed the concerted plan to compel the assembling of a parliament on College Green by such displays as should prevent the government from exercising a free will on the measure—by the circulating of inflammatory speeches and writings—by mottoes and devices exaggerating their woes, oppressions, and wrongs, admirably adapted to stir up to mutiny a proud and sensitive people—by procuring an affiliation of three million repealers, and collecting together at the command of one man any number of persons at one place from almost any distance; he wished to make it known to the least observant, that there would be danger of convulsion in refusing compliance with his behest. By preaching peace, where there was no peace at heart, by fostering bitter hatred to the people of England, the Saxon and stranger, whose accursed foot had polluted their soil, by darkening the page of history with the battles,

defeats, and massacres of the Saxon centuries ago, by hardy assertions that the Act of Union was illegal and not binding on the conscience, and supported by the great body of the Roman Catholic clergy before whom the people bowed down, he disseminated through the length and breadth of Ireland a fell community of purpose, and from Cape Clear to the Giant's Causeway sowed broadcast the seeds of disaffection. The armed men were not to spring up in his time, but to wait the moment for action, should he stamp the foot, like the enchanted warriors in the ballad, each standing mute and motionless by his charger, but ready to vault into the saddle the moment the blast was blown. The scheme of displaying present tranquillity, but, in the event of his demand being refused, certain disturbance; peace and subordination in the foreground, but civil war in the distance, at once flattered the pride of the wary dictator, and promoted his ambition. Over-impatience, over-impetuosity, breaches of the peace, acts of violence, were what he most dreaded and deprecated. When numbers are guessed, they are exaggerated almost of necessity; but his boast must be true, by the agreement of all parties, that hundreds of thousands of men of a fighting age attended those meetings, and were obedient to him as a body guard. Impoverished to the last degree, the peasant, in his want of food and clothing, caught at any fanciful speculation, which might perchance exchange present misery for future blessing, and the Celt discovered in foreign misrule the cause of that wretchedness which lay in his homestead, listlessness, and apathy, and sloth.

As the summer of the proclaimed repeal year advanced, and the Association gathered within its daily-increasing circle greater numbers and a more ample exchequer, the courage of the leaders gained strength from perceiving the inaction of government, who had done nothing but make loud declarations in both Houses of Parliament, and compose a threatening royal speech; their language grew more distinct and unguarded, and the muttered resolve more harsh and defiant. They began to mimic the terms of war, and to talk of repeal-cavalry; of the myriads who could march as well to the temperance bands, as troops in red coats trained

to the command of a corporal; of the muster march and parade; of the nine millions who would not brook a foreign yoke. "Let them attack us, and then —" said O'Connell, with a pause full of meaning. Then he struck his breast, and the people "made the welkin ring" with their clamorous applause. Two millions of grown-up men had met and dispersed without a single breach of the peace, or alarming the vicinity which conspired with them, if they were conspirators. They had met on spots consecrated to national hate, as places where the Saxon had massacred the Celt, or had fallen victims to his ruthless vengeance; and his brow had grown darker, and his hand become clenched as he listened to O'Connell and Dr. Gray, or read the warlike proclamations of Barrett and Duffy, exaggerating the story of his country's wrongs. It was the dead calm, more fearful than the moanings of the coming tempest, which augured a great upheaving of the masses, a simultaneous and universal outbreak. The myriads, grouped together in silent energy, seemed like some huge avalanche which a single pistol-shot might cause to move and fall in one crashing ruin. The fatal crisis, says Curran (in his speech for Hamilton Rowan), is equally a surprise upon both; the decisive instant is precipitated without warning by folly on the one side, or by frenzy on the other; and there is no notice of the treason till the traitor acts."

If government were somewhat tardy in taking decisive measures to arrest this enormous mischief, the charge of treachery hurled against them for not interfering sooner was certainly unjust. The mutual concert, dissuasions from actual violence, lest it should give strength to the enemy on the one hand; and the most docile obedience to instructions on the other, had been so complete, that, until matured and developed by being unchecked, their designs stood forth, scarcely disavowed. Government could not have interposed without incurring the imminent risk of defeat. Illegal individual assemblies there might be none; seditious meetings, abstractedly considered; there might be none: the guilt consisted in the concert of those who brought the populace together, with the object of superseding legitimate authority by the continuous display of immense physical power, wielded

at the will of one ruling mind, for one single national object. To see O'Connell and his serfs, like Cæsar and his legions, thus arrayed, and make no sign of resistance, was to submit. The first two or three meetings had been convened for the ostensible object of discussing a great public measure; their assembling had caused no terror to the public, and they had dispersed so quietly, that not a woman or child, for both women and children swelled the ranks of the repealers, was alarmed or hurt. By guardedly preventing all tumult and disorder, by meeting and dispersing without a single act that the most active policeman could take advantage of, by carefully abstaining from all that gives a character of illegality to the collection of large public bodies, arms, and menaces, and violence; the leading members of the Association hoped to escape from all penalties, and laughed at Acts of Parliament. But when twenty or thirty such meetings had been held in multitudinous succession, and less guarded language had been addressed to the exultant millions, that ministers must sue for terms; that they were on the verge of a bloodless and stainless revolution; when the magistrates who had been dismissed for supporting the repeal of the Union, were re-appointed by the Repeal Association as arbitrators before whom the people must take their cases, and state their wrongs; when the Repeal press rang with challenges to the English, and cajolery to the troops, the Attorney-General advised the Crown that the common law of the land would suffice to crush the pestilent mischief, and the gauntlet which O'Connell had thrown down, was tardily taken up by the first law officer. He felt, as a sound lawyer, that the good old common law would not tolerate this attempt at intimidation by the display of numbers, or submit to this concerted schooling of both Houses of Parliament, — to the trumpet note of faction, that there was an immense physical force ready organised, arrayed to such an extent, and so completely enrolled and marshalled, that it must be rash and presumptuous to refuse what they asked, the repeal of the Union.

Never had the Four Courts afforded to Curran, or Bushe, or Plunket, a nobler theme, or more felicitous opportunity for eloquence; and, to the credit of the Irish Bar, it must be

confessed that the occasion was met well and worthily. The cause of the Traversers, espoused by the Lower nation, was first entrusted to the brilliant advocacy of Mr. Sheil, whose dramatic speech, though not always pertinent or to the point, or distinguished for logical reasoning or exact ratiocination, was sparkling, terse, epigrammatic, studded with pretty fancies and neat antithesis and personal taunts, full of clever hits, and gibes, and sarcasms, sure to keep alive the attention, and certain of applause. If his dazzling oration sometimes soared beyond the ken of his audience, and left the subject of his client's guilt or innocence far behind, it was only like the shaft in classic story, which cut the cloud and disappeared from sight, but cleaved a long track of brightness.

The defences urged by Mr. Moore and Mr. Henn for their several clients reflected the highest credit on those excellent lawyers, and won the suffrages of the Bar, being replete with sound argument vigorously expressed. But the crowning glory of that memorable arena was reserved for Mr. Whiteside, who alone played the part of a consummate orator:

> "He tower'd above the rest,
> In shape and gesture proudly eminent,"

for on his shoulders the mantle of Plunket had fallen. Impassioned in tone, fervent in language, philosophical in spirit, relieving long passages of legal learning, and chaste, nervous, masculine argument, by pleasant jest and keen raillery, he rose to the height of the great occasion, and concluded his brilliant oration with a sublime enumeration of the advantages of free discussion, which so completely enthralled the minds and hearts of his hearers, that they burst into a torrent of applause which swept away before it all remembrance of the decorum due to a court of justice, and which the Chief Justice did not attempt, for he saw it would be idle, to repress. "That splendid exhibition of eloquence," according to the generous testimony of the Solicitor-General, "did honour to the speaker, to our profession, and, I may add, to our country. I listened to him with great delight and admiration. His speech was also characterised by a tone of perfectly good feeling."

All that Cicero wished to be combined for the triumph of

his orator, concurred on the second day, when Mr. Whiteside entered the court amid the loud applause of the audience, who had listened with hushed admiration to his eloquence, had been entranced with the concluding sentences, and were on tiptoe for the continuation. "Velo hoc oratori contingat ut cum auditum sit eum esse dicturum locus in subselliis occupetur, compleatur tribunal, gratiosi scribæ sint in dando et cedendo loco, corona multiplex, judex erectus; cum surgit is qui dicturus sit significetur a coronæ silentio, deinde crebræ assensiones, multæ admirationes risus cum velit, fletus; ut qui hæc procul videat, etiamsi quid agatur nesciat; at placere tamen et in scenâ esse Roscium intelligat."

O'Connell himself scarcely rose to the height that had been anticipated, for he required an applausive audience and the excitement of frequent cheers, and was neither impassioned nor pathetic. The commencement of his speech was good, from its simple tone of masculine sense and absence of all pretension to finery or effect. He clothed himself *for the nonce* with the impressive gravity, "where sense o'er all held mastery," and severe sententiousness of Flood. Independently of his position as the dread tribune of the people, who ruled greater numbers, and more absolutely than any who had preceded him, he commanded earnest attention, from the plain, serious tone of conviction with which he spoke, and his calm defiance of an adverse jury; but the most devoted failed to listen when he sank into the swamp of calculations, and tables of the number of horned cattle and swine exported, and the details of statistics, —

> "that Serbonian bog
> Where armies whole have sunk."

It would be unjust to withhold the praise from the law officers of the Crown, to which they were so justly entitled, of doing their work in Court artistically and well. The speech of the Attorney-General could scarcely be other than legal and historical, for it was part of his duty to open an immense body of evidence, and apply the law of conspiracy to it; but he lightened the weighty mass of facts by sharp and pertinent comments on the delusions that O'Connell had practised, and, by reite-

rating the keen challenge of a lawyer to a lawyer, to prove the truth of his assertions, relieved a speech of eleven hours' duration from monotony and weariness. The reply of the Solicitor-General has deservedly attracted admiration for its excellent compendium of law and fact; accurate, argumentative, and convincing. Having eight renowned champions to encounter and disarm, he parried the thrusts of each with steady courage and address, and turned the point of several of their weapons with singular dexterity. The calm, temperate, reserved style of address to which a rigid professional etiquette has restricted both the speech and the reply of prosecuting counsel may have detracted from the fervour of his oratory, and its consequent immediate impression; but his clear exposition of the law and facts could not fail to sink deep into the minds of the jury, and has been generally considered sound and correct. Their verdict of Guilty against all the defendants rewarded the strenuous exertions of the Crown counsel; and the sentence of a year's imprisonment on O'Connell, with a fine of 2000*l.*, and sureties to keep the peace for five years, could scarcely be regarded as too grave for the offence. The immediate effect of the conviction and judgment was removed by the decision that ensued on the writ of error, which overthrew, with signal discomfiture, the whole proceedings of the prosecution.

By an unfortunate series of errors and mistakes, the voluminous, unintelligible, unwieldy indictment, as Lord Denman termed it, contained counts which all the judges of the Queen's Bench in Ireland pronounced to be good, and all the judges in England to be bad; and as judgment had been entered up, and sentence passed on these as well as on the good counts, a majority of the law peers held that the whole judgment was vitiated. This wholly unexpected announcement introduced a startling novelty into criminal pleading, but one calculated to produce decided good in disencumbering an indictment of superfluous averments, an erroneous opinion having till then prevailed in the profession, that any number of defective counts in the indictment would not affect the judgment, provided there was a single good count on the record to sustain it. The findings upon the first four counts which the Court of Queen's Bench

in Ireland had suggested, which had been approved by the counsel for the Crown, but which the jury had altered in their anxiety to be accurate, were also pronounced to be hopelessly defective. The wisdom and expediency of another innovation, that the curious conflict of opinions occasioned, the abstinence of the lay peers from voting upon a grave law question when the highest court of appeal differs from the judges, however popular a measure, may deserve serious consideration. Many important constitutional questions have been settled, some in conformity with, and some in opposition to the opinions of the judges, by the votes of the peers, lay and spiritual, against the voices of the law lords. Several of these peers, from their experience as chairmen of quarter sessions, others from a legal training in the inns of Court, others from their sound learning and judgment, have too much knowledge, and too efficient an acquaintance with the subject to be required to abandon or delegate their authority, as members of the supreme court of judicature. The very absence of numbers tends to lessen the weight of the decision. Lord Wharncliffe, who proposed that the law lords alone should vote, had at least as much personal experience in all points of criminal law, as the exc-hancellor who made a bare majority of one. In this particular instance there might be danger doubtless of political motives unconsciously swaying the judgment; but, even as it was, there did rest more than a fleeting shadow of suspicion on the party bias of the learned lords who spoke and voted. Nominally, the judgment proceeded from the highest court of appeal; in reality, from three law lords, Denman, Cottenham, and Campbell, differing from two of equal learning, Lords Lyndhurst and Brougham. The decision of these two last was in unison with that of seven judges against two in England, and of four judges of the Court of Queen's Bench in Ireland, so that the ultimate judgment of the House of Lords was according to the opinion of five lawyers against thirteen. The prophecy of Lord Brougham, that such a judgment would go forth without authority and return without respect, has not, however, been fulfilled, the suffrages of the profession being decidedly in its favour.

To complete this strange corollary of the events, political as well as legal, which followed the trial, Fortune seemed to smile once more on the standards of repeal. O'Connell again ascended his triumphal car from the prison gate, amid the huzzas of his worshippers; the hills blazed once more with signal fires; loud was the burst of victory, and fierce the taunts thrown at the baffled law-officers of Ireland, on their prodigality of blunders. But, after all, the real and enduring victory was theirs! The *prestige* of success had passed away, since his imprisonment, from the champion of repeal; the principles of the common law had been professed, and its power vindicated, though the meshes of the drag-net which it wove were torn by technicalities. But the spell of O'Connell's name on the hearts of the peasantry was broken; their sanguine hope of repeal became monthly more faint and dim; the monster meetings were talked of no more; the weekly rent began to dwindle, and the voice of the stalwart demagogue to fail. To borrow a favourite phrase of Carlyle, the once popular notion of wresting repeal from England, by the show of strength, began to be hooted as a sham. Crushed by the might of the common law, this pretence bewildered O'Connell's credulous countrymen no more, and though they suffered heavily from plague and famine, they learnt a salutary lesson from his trial, and their ranks were not thinned by the sword.

The preliminaries to this important trial are too interesting and important to be passed over. O'Connell and the eight other defendants were held to bail on the 14th October, to answer informations for conspiracy that had been lodged against them.

Mr. Bond Hughes, who had been deputed to attend the recent meetings as a reporter for government, had mistaken the person of Mr. Barrett, and sworn erroneously to his being present at two meetings. The first clever, unscrupulous move adopted by the Traversers, was to countermine the miner, and prefer informations against the witness for wilful and corrupt perjury; but the magistrates declined to

receive them. A mandamus was moved for, but refused, commanding them to take the informations. The Attorney-General opposed the application, as merely made to prejudice the case then before the grand jury, and declared prematurely that if the bill was found, he would undertake to establish as wicked and foul a conspiracy as ever disturbed an empire! The Court recommended the parties aggrieved to prefer bills of indictment; but nothing further was done.

On the first day of term, November 2nd, Judge Burton luminously charged the grand jury on the nature of the bills that would be preferred for a conspiracy to induce and procure large numbers of persons to assemble and meet together, in order, by intimidation, and the demonstration of physical force, to procure changes to be made in the constitution of the realm. The charge was this, "an intention to intimidate, by the demonstration of great physical force, all persons who might be adverse to an alteration in the constitution and government; and especially by such demonstrations to affect, or endeavour to affect the proceedings of the legislature on the subject." After this clear exposition of the law, a huge volume of parchment was borne to the grand jury room. There being a clerical error in one count, the name of Tierney for Tyrrell, the foreman brought the bill to have the name inserted in the proper place, but the counsel for the Traversers denied the power.

Mr. Hatchell, Q. C. They can withdraw the indictment if they please, my lords, but they cannot amend it in court.

Chief Justice. This being a misdemeanour, if Mr. Tyrrell or his counsel consented to the alteration, it could be made: but if he does not—

Attorney-General. I apprehend there is nothing to be done, my lord, but for the officer to amend the clerical mistake in the indictment, and hand it back to the grand jury, the bills not having been found by the grand jury yet.

Mr. M'Donogh. May I beg to ask the learned attorney, what has the officer of the court to amend by—what authority or knowledge, official or judicial, has Mr. Bourne of what name should be in the indictment?

Chief Justice. The informations.

Mr. M'Donogh. I submit that the learned Attorney-General must produce some authority to justify that course.

Attorney-General. I am under the apprehension that Mr. M'Donogh is acting as *amicus curiæ* here; if not, he will be good enough to hand in his license to appear for Mr. Tyrrell.

Upon an assurance that the license had been obtained, though not actually in court, the Attorney-General withdrew his too technical objection, but relied on another, that counsel for a party could not be heard before the indictment was found, and submitted that neither Mr. M'Donogh nor any other counsel had a right to be heard on the part of Mr. Tyrrell at this stage of the proceedings.

The Chief Justice said the Court were of opinion that the objection was premature, as this could not be properly called a bill of indictment; it was no such thing until the judgment of the grand jury was passed on it, and until then it was merely a proceeding sent up to the grand jury, on the part of the Crown, by the Attorney-General, through the hands of the Clerk of the Crown. At present there was no third person that had a right to be heard in it at all, and if the grand jury pointed out a clerical error to the Court, and if the Attorney-General were desirous to have the mistake rectified, the Court will give him full permission to do it, or he might do so without asking the Court at all.

On the 8th of November the grand jury returned a true bill, when one of their number, a malcontent, Mr. O'Gorman, exclaimed, that he begged leave to express his dissent from that bill, as one of the jurors! A striking illustration of the impulsive character of the Irish people. What English grand juror would have so far forgotten his oath of secrecy? But not a single step could be taken, apparently, in this political trial, without some exciting scene.

The defendants were called on their recognizances to appear, and Mr. Steele, best known as Tom Steele, when his name was pronounced, said, with all befitting gravity, "My Lords, I also think it right to inform you, speaking for myself alone, and leaving my friends, the other traversers, to act for them-

selves according to their own discretion—that I decisively object to be prosecuted by the Attorney-General [*great laughter throughout the court*]. It is no laughing matter; it is a matter of the administration of the public justice of the country! [*The laughter instantly subsided into dead silence.*] I say, my lords, that I decisively object to my being prosecuted by the Attorney-General, as it is matter of notoriety through the press, that he has publicly prejudged the question, and has prejudged it too in terms of great malignity to the accused, while their case was actually under the consideration of a jury. Under these circumstances, I hope the Attorney-General will have the sense of propriety, or indeed, my lords, I ought rather to say, the sense of common decency, to withdraw himself on this occasion from the function of public prosecutor for the Crown, and leave that duty to be performed by his highly gifted, and patient, and good-tempered colleague, the Solicitor-General."

Of course no notice was taken of this unseasonable protest. The Attorney-General then moved for an order "that the defendants do plead in four days to be computed from the present time. I move, under the statute 60 Geo. 3. c. 4., in which there is an express provision to that effect, and I move, on the precedent of a similar order made in the case of the King *v.* O'Connell in the year 1831." Upon this commenced a keen contest, manfully sustained, to accelerate all proceedings on the part of the Crown, and to delay them by every art and trick of procrastination, on the part of the Traversers.

The Attorney-General was premature in his application; as, under the statute, the parties could not be called upon to plead, until they were charged by the indictment, and that could not be done until the charge was read by the clerk of the Crown.

Mr. Whiteside interposed with an awful menace: "It is right to apprize you that, in this case, if you read the indictment, there being eight persons charged in it, you must read it eight times over" [*laughter*]. And it took the grand jury three days to read it!

Mr. Moore, the leading counsel for the defendants, also declared, that if the Crown insisted on the rule to plead then, the result of which would be to leave them only three clear days instead of four to consider what ought to be done, a decided hardship, he should insist on the alternative of having the indictment read from beginning to end.

The point was conceded, that the rule to plead should be made on the following day.

On the 9th of November, Mr. Henn, Q. C., applied on the part of the Traversers for liberty to compare the copy of the indictment furnished to them with the original bill. The Attorney-General resisted the application. "I apprehend that all the copies that have been served on the parties have been, according to the course of the court, certified by the Clerk of the Crown. If that be the case, I certainly do not feel that there should be any thing done out of the ordinary course in the present case. I object to their right to see any thing indorsed on the bill. They have no right to see the bill of indictment, or the names of the witnesses on the back of that bill."

The Solicitor-General added, "If the Court think right to direct the officer to compare it, it is all right; but the parties have no right to see it."

Mr. Henn rejoined, "All we require is to have the copy compared in the ordinary way. I submit that the rule to plead should only run from the time we have compared it."

These several attempts at procrastination were overruled, and then Mr. M'Donogh applied that they should be furnished with the caption of the indictment. The copy of the indictment with which they were furnished did not contain the caption. Nothing could be clearer than that the Traverser was entitled to a copy of the whole indictment.

The motion was postponed, notice of the application not having been given in the proper course. Pursuing with great ability their Fabian tactics, Mr. Whiteside, on the 11th of November, moved, on the part of Mr. Duffy, that the paper furnished by the clerk of the Crown, "as and for a fair copy of the indictment, be amended, by having added thereto the

entries and indorsements on the indictment, including the names of the witnesses."

He considered the names of the witnesses a part of the indictment, and cited in support of his argument the statute 7 Wm. 3. c. 3., which enacted "that all and every person whatever who was accused of, or indicted for, high treason, should have a true copy of the whole indictment, but not of the names of the witnesses, delivered to them." They would have been entitled but for this clause, or the framers of it would never have said that a copy of the indictment should be furnished, excepting the witnesses' names. One great reason why, in this case, the names of the witnesses should be supplied was, that his client, Mr. Duffy, was charged in the indictment with acts said to be done by other parties in remote parts of the west and south of Ireland, where he was not, when those alleged acts were committed. The Attorney-General, by a brief reference to the law authorities on the subject, and to the course of practice from time immemorial, was confident of being able to convince their lordships that the concession of such a proposition would be directly at variance with law, justice, and expediency. He cited the case of Reg. *v.* Bourne, 4 Jurist, 492, where an application was made, similar to the present, to the Court; but the Court distinctly refused to grant it, notwithstanding that the defendant grounded his application on an assertion upon his oath, that he had reason to believe that the witnesses, whose names he wished to learn, had been bribed and suborned to give evidence against him. The Court, even under these circumstances, refused to give a copy of the names. After a lapse of nearly twenty-five years, not a single precedent could be produced of an application of that kind having been made. If the names of the witnesses were part of the indictment, they would be part of the record, and then in all cases of felony, or of treason, the parties accused would have a right to take out copies of the record, and thus to get a list of the witnesses' names, which it was well known they were not allowed to do.

The Court unanimously pronounced judgment against the application.

Mr. M'Donogh, Q. C., then moved, on the part of the Rev. Mr. Tyrrell, that a copy of the caption of the indictment against his client should be delivered to his attorney, or that the copy of the indictment already furnished to him might be amended by adding thereto the copy of the caption.

The propriety of conceding that demand admitted of greater question; for, though in fact the caption was never added at the time, and formed no component part of the indictment, being in the nature of a preamble, it was the duty of the officer of the court to make it up *de die in diem*, to set forth the count wherein, the jurors before whom, and the time and place in which the bills had been found, and a copy of this seemed necessary to enable defendants to consult with counsel as to the nature of the pleas they should put in, or whether they should demur to the indictment altogether. As no precedent could be found for the application being granted in cases of misdemeanour, though the 60 Geo. 3. c. 4. had been in force for twenty-four years, the majority of the Court decided, that without some special ground the defendant was entitled merely to a copy of the indictment, as it came from the grand jury. Mr. J. Perrin dissented, delivering a learned judgment in favour of the concession.

Mr. Whiteside, then referring to the application for a return of the names of the witnesses indorsed on the indictment, which had been refused by the Court for want of a precedent, begged leave to hand up the case of R. *v.* Dr. Parnell, 1 Wm. Blackstone's Reports, p. 36, where the Chief Justice of the King's Bench held that the prisoner was entitled, as a matter of course, to a copy of the indorsement on the indictment. The Attorney-General remarked, that, as there was no notice of the present motion, he should of course oppose it.

There occurred the following sharp dialogue between the Court and counsel.

Mr. Whiteside. In the case I have handed up to the Court, the granting of a list of the names of witnesses is mentioned as a matter of course.

Mr. Justice Crampton. But the objection here is, that you are taking the Crown by surprise.

Mr. Whiteside. The Crown have nothing to do with it. I would not ask a favour from the Crown, because if I did, I know they would not grant it [*laughter*]. All that I want is, that the officer of the Court do that which, according to the dictum of the Chief Justice of England, is a matter of course.

Mr. Justice Crampton. You must give notice to the Attorney-General.

Mr. Whiteside. I did not know that it was in the power of the Attorney-General to grant or refuse it.

Mr. Justice Crampton. Nor is it in his power to grant it; you are not mistaken there; nevertheless, you must give notice.

Mr. Moore then declared his intention of moving for a bill of particulars of the charges in the indictment. The necessity for discussing this was averted by full particulars being delivered. The defendants wearing the repeal button, such of them at least as were laymen, put in pleas of abatement on the ground that the witnesses examined before the grand jury had not been sworn in open court. A preliminary objection was raised on the part of the Crown, to which the law officers should assuredly not have condescended, that the plea was taken too late, according to the practice in civil cases, that the statute 60 Geo. 3. c. 4. was intended to prevent delay, and the Court would not put a construction upon it that must produce delay. The Act merely required the defendants to plead or demur to the indictment in four days from the time of their appearance. In answer to a letter from the attorneys for the traversers they were informed by the Clerk of the Crown that they had the whole of Tuesday, the day on which they pleaded, to plead. After this assurance, there should have been no discussion on the point of time; but Mr. Brewster, who replied for the Crown, seems to have wanted tact and temper, and a scene in consequence ensued, that bore the character of an Irish row.

Mr. Brewster. Mr. Henn called on the Attorney-General

to know would he press his motion after that letter, but I will show it was no motion at all, and I must say that it surprises me that Mr. Henn should make such an appeal. I would sooner have expected that any gentleman at the bar would have done so.

Judge Burton. You mean any *other* gentleman.

Mr. Brewster. Yes, any other gentleman. His friend, Mr. Moore, did not press that point, and in not doing so he showed an instance of sagacity that did him credit, for I appeal to any honest, fair, and upright man, reading that letter, if it has not been evidently contrived and concocted to deceive and entrap the officers.

Mr. Pierce Mahony. I protest against such language being used towards us, the attorneys, who swore in our affidavit, that the contrary was the fact.

Mr. Cantwell. I also protest against the observations of Mr. Brewster.

Chief Justice. You must keep order there.

Mr. Mahony. My lord, I have a great respect for this court, but I have a greater respect for myself. Such an attack calls for remark.

Mr. Ford. It is unjust that the Crown should constantly attribute to us motives which we deny by our affidavits.

Mr. Fitzgibbon, Q.C. That letter was read to and approved of by counsel, of whom I was one, and I still approve of it.

Mr. Whiteside, Q.C. And so do I.

Mr. Moore, Q.C. Though the letter was sent by the attorneys, still what was done by them had the sanction and concurrence of counsel, and I say it was sent without any intention to entrap any man, as our object was to get accurate information as to the time the rule had to run.

Mr. Brewster said, after what Mr. Moore had stated, he was willing to admit that the letter was not sent for the purpose he had mentioned, as he believed his learned friend would be incapable of acting in any unfair spirit.

Mr. Mahony. Is it not hard that conduct is imputed to us, the attorneys, the imputation of which, as to counsel, has been disavowed? Mr. Brewster has no right to say he be-

lieves the statement of counsel, while he hesitates to believe the sworn statements made by us.

Chief Justice. You ought not to interrupt the Court, Mr. Mahony.

Mr. Mahony. Nobody respects the Court more than I do, but I must say that it is very hard that counsel's mere assertion is to be believed, while it is insinuated that we, the attorneys, are not to be believed upon our oaths.

Chief Justice. If you don't remain silent you must leave the Court.

Mr. Mahony. I shall always vindicate myself, but I will obey the order of the Court.

Mr. Brewster said, he did not impute any impropriety to Mr. Mahony: he merely said the officer had been deceived, and he supposed the counsel and the attorneys had been deceived also. A mist must have obfuscated all his learned friends on Saturday, and clouded their understanding in an extraordinary manner. They said that their object was not delay, but there never were men so misled in their own proceedings, or so little capable of judging of what they required as they appeared in that case to be, though they had eight or nine of the most learned men at the bar amongst them. They were certainly a simple set of poor fellows, and because the officer had misled them, or because the attorneys had misled themselves, they now called on the Attorney-General not to enforce the law against them; but he trusted that all who would so attempt to act would find themselves placed in the same position. His learned friend the Attorney-General would have had a perfect right to have gone that morning, when that plea was on the file, and have marked judgment.

What a magnanimous mode of snapping a judgment for the Crown on a great constitutional question! The Chief Justice overruled almost contemptuously the captious objection, that these being dilatory pleas, and not pleas in bar, were too late. "It was perfectly certain that on last Saturday a formal application was made on behalf of, he would say, all the Traversers, because there was no distinction between them—to know from the proper officer what length of time the parties had to plead, and it was perfectly certain that the clerk of the Crown

— the officer of that court — being thus seriously applied to, did give a serious answer in writing, that the parties who made that application had the whole of Tuesday to put in their pleas. Now it was said that the officer was imposed upon and taken in. The officer might not have his attention called to the subject; but he (the Chief Justice) must say he thought the terms 'taken in, or imposed upon,' as applicable to that particular subject, were terms that might as well not have been used. He did not find how it was that the Court could give attention to the Attorney-General that day insisting that Monday was the last day for pleading, when, on last Saturday, on a formal application, the regular officer of the court gave it under his hand to the parties interested that they had the whole of Tuesday to plead."

Independently of this personal objection, the Court were of opinion, that the accused had not been deprived by the statute of the privilege of pleading either in abatement or in bar. They had previously the right of deferring their trial to the following term, and the judges must not put a narrow construction on the act of parliament, which took away that valuable privilege. The pleas being thus formally received, the Attorney-General at once demurred, and called upon the Traversers to appear instanter and join in demurrer. Mr. Moore asked for some authority which required his clients forthwith to join, and the Attorney-General, never at a loss for a case, cited R. *v.* Layer, State Trials, vol. xvi. p. 93., where the Court said the prisoner could have no benefit by allowing him time to join in demurrer, except to put off his trial. This was, however, a case of treason, and several express authorities to the contrary in misdemeanours proved the practice to be, to give a four-day rule. Notwithstanding the practice vouched by the clerk of the Crown, the Attorney-General insisted on his right. "It was well observed by Lord Plunket, that the rules of the court are the servants of the court, and where a plea in abatement is put in, as I assert, in order to create delay, and where I sustain that view by demurring as rapidly as I could, considering these circumstances, I trust your lordships will, notwithstanding any rule of practice to the contrary,

require them to join in demurrer forthwith, as I require them."

Mr. Moore, Q. C. The learned Attorney-General has made one of the most extraordinary propositions that was ever made by any counsel in any case. There is, according to the report of the officer, a certain practice existing in the court, entitling a party accused to a certain privilege, and yet the Attorney-General gravely calls upon your lordships to disregard the former practice of the court, because, and *merely* because, he has made up his mind that our object is delay, and because he has also made up his mind to argue the matter to-morrow, and that therefore all these rules that have been established by the court for its guidance, and that are for the benefit of the accused, are to be laid aside at his bidding. If the Attorney-General can bring forward any authority to support this strange and unconstitutional doctrine, it will be one that I never heard of before, and I trust will never hear of again.

Attorney-General. I have been asked for an authority, and I give as my authority the case of the King *v.* Kirwan, which I have already cited, and which took place in this court; and having referred to that authority, I now again call on the Court to require the Traversers to join in demurrer instanter.

Chief Justice. Was there any objection taken in that case by the traversers, or any application on their behalf for a postponement?

Attorney-General. No, my lord, there was not.

Chief Justice. And don't you know that that is no authority?

Attorney-General. Of course I leave the matter to the Court to have the rule entered.

After a pause of some moments, the Attorney-General again rose, and said: I now call for the rule to join in demurrer in four days.

On the 20th November the joinder in demurrer was handed in, and the Attorney-General applied that it should be argued the next day. The defendants wanted a further delay of four days to have the paper books made up; but the

Crown had taken care to have this done, anticipating the pretext for postponement, and succeeded in having the case set down for argument the following morning, though the attorneys insisted pathetically that they must sit up all night to have the briefs prepared. The Chief Justice coolly rejoined that they had had already four days, and it was their own fault if they had done nothing.

The discussion of the demurrer involved a question on the construction of the act of parliament of very considerable nicety, and was argued by the Attorney-General and Sir C. O'Loghlen in such a manner as to reflect great credit on the law talent of the Irish bar. The short point was, whether the 1 & 2 Vict. c. 37., requiring the foreman of the grand jury to administer the oath to the witnesses instead of being sworn in open court, according to the provisions of 56 Geo. 3. c. 87., extended to the Court of Queen's Bench, or was restricted to the assizes and quarter sessions. The witnesses had been sworn in the grand jury room, and the Traversers' counsel contended that this vitiated the whole proceeding, the statute of Victoria not comprehending a special commission in the Court of Queen's Bench. The Attorney-General "begged to call the attention of the Court to the fact that he was seeking to support the construction of the Act which it had received from all the judges in Ireland from the period when it received the royal assent." C. J. Woulfe and C. J. Doherty had construed the Act as applicable to the Commission Court: the practice of the foreman administering the oath to the witnesses that was formerly administered in open court had been uniformly acted upon, and sentence of death had been pronounced upon prisoners, and carried into execution; at that moment hundreds were undergoing transportation and imprisonment on that construction of the act of parliament. Any other construction was inconsistent with the spirit, intent, and object of the legislature.

"What had been suggested on the part of the Traversers was this: — that it was his duty, as Attorney-General, to throw aside the deliberate opinions of the learned judges of Ireland, acted upon since the statute passed, and to adopt a course which would throw an imputation on the correctness

of that construction on which men suffered death and transportation, and adopt a construction that, if well founded, would lead to the pardon of every man now undergoing sentence of transportation or imprisonment from the Commission Court. He trusted that was a sufficient vindication of the course it had been his bounden duty to pursue; and he would not be deserving of holding his office for an hour if he were capable of taking any other course, and he trusted that would silence some of the observations which persons, in ignorance of the law and in ignorance of the facts, had thought proper to make on the course pursued in this case. It had been the custom in Ireland, as their lordships judicially knew, prior to the passing of the 56 Geo. 3., for grand juries in Ireland to find bills of indictment, not upon their own knowledge, but in a manner which the law did not now recognise — that was, upon the sworn informations, without examining the witnesses at all. The object of the 56 Geo. 3. was to alter the practice in that respect; and accordingly, by that statute, c. 87., it recited, — 'Whereas a practice hath prevailed in many of the grand juries in Ireland, to find bills of indictment, without examining witnesses for the Crown; and it is expedient that this practice shall for the future be discontinued: Be it therefore declared and enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, &c., that from and after the passing of this act, no bill of indictment shall be returned a true bill by any grand jury in Ireland, unless the same hath been found, by the jurors upon the evidence of one or more witnesses for the Crown, sworn in court, and produced before them, with such other lawful evidence as the nature of the case may require or admit of.'

"The real object of the act was that there should be a *vivâ voce* examination on the testimony of sworn witnesses, extending to every court and grand jury throughout Ireland. The statute led to this inconvenience, that the proceedings, particularly of the Courts of Oyer and Terminer throughout the country, were interrupted by swearing the witnesses in court, and it was considered better to administer the oath to

them in the grand jury room, there being twelve of the jurors present, than amidst the noise of a crowded court. That inconvenience had been adverted to by Chief Justice Doherty, in the Hilary sittings in 1839; he said that it led to an irreverend administration of the oath. The object of the 1 & 2 Victoria was to avoid that mischief in every Court of Oyer and Terminer, and in none of them would the proceedings be more seriously interrupted than in the Court of Queen's Bench, if many bills were sent up to the grand jury. It was to remedy the mischief arising from the administration of the oath in court, but still carrying out, and seeking to carry out, the principles of the 56 Geo. 3., of having a *vivâ voce* examination, that the act of 1 & 2 Vict. was brought in and passed; and now he would beg leave to read the preamble of that act of parliament, and he would venture to say, that the ingenuity of man would not be able to show any thing in that preamble to confine it to any particular class of Courts of Oyer and Terminer. The act by its title was 'An Act to empower the Foreman, or any other Member of Grand Juries in Ireland, to administer Oaths to Witnesses on Bills of Indictment;' and though he admitted that no great stress was to be laid on the title of a bill, it had not been thrown out of consideration in all cases. The preamble, after reciting the evil of bills being found without examining witnesses for the Crown, proceeded, 'And whereas the provisions for the *vivâ voce* examination of witnesses by the grand jury, upon the consideration of bills of indictment, has been found most salutary, but the administration of the oath in court has been productive of delay and other inconveniences, for remedy whereof be it therefore enacted, that in all cases where bills of indictments are to be laid before the grand juries in Ireland for their consideration, the clerk of the Crown at the assizes, (and in these words the whole technical construction was sought to be put in the act), and the clerk of the peace at quarter sessions, or his or their deputy, shall endorse upon the back of the bill of indictment the name or names of the witnesses for the Crown in support of such bill, and shall send the same so indorsed to the grand jury; and the foreman or other member of the grand jury so

empannelled, twelve members of the said grand jury (at the least) being there present at the time, shall, and they are authorised and required so to do, previous to the examination of any witness whose name shall so appear indorsed upon the back of any bill of indictment, administer to such witness the oath or (in case of persons by law permitted to make a solemn affirmation in courts of justice) the solemn affirmation required so to be taken by such witnesses: Provided always, that the said oath, or affirmation, is not to be in addition to, but in lieu of, that heretofore administered in court under the provisions of the said act passed in the 56th year of the reign of his late Majesty King George III.' Now was it not plain and palpable to the commonest and dullest understanding, that the object of the act of parliament was this, to leave that untouched which was found to be beneficial under the 56 Geo. 3., namely, the *viva vôce* examination of witnesses, and to apply a remedy to that which was not found to work well, the mode of administering the oath? But there followed another proviso that was equally strong: 'and provided also that no foreman of any grand jury, nor any other member thereof, shall have power to administer such oath, or affirmation, or to examine any witness in support of any bill of indictment whose name shall not have been previously indorsed on such bill of indictment by the clerk of the Crown, or clerk of the peace respectively.' They had not there introduced the clerk of the Crown at assizes, or the clerk of the peace at quarter sessions, but they had a general proviso, as general as the English language could make it; because it was thought advisable by the legislature with respect to proceedings at the assizes, that a popular meaning might be given to the words, and that the clerk of the Crown was to perform that ministerial duty, and that at quarter sessions it was to be performed by the clerk of the peace, the Court were to act in contradiction of the legislature, as appeared by the preambles and provisoes of the act, and narrow the construction which it had received from all the judges in Ireland since it passed to the present day. The act did not refer to grand juries at assizes or quarter sessions only, but to every grand jury; and the

words clerk of the Crown and clerk of the peace respectively would embrace every officer that was to perform the ministerial act. Were their Lordships to be called upon, in violation of the clear, plain, palpable, and undeniable meaning of the legislature, as appeared from the preamble and provisions of the act, to hold that those words were to control and contradict the objects and intentions of the legislature?"

The Attorney-General then cited a variety of cases to prove that this statute, being remedial, ought to receive a liberal construction; and contended, with little show of reason, that if he were called upon there, where there was special pleading upon this act, for a strict literal construction, it was open to him to submit that it was a mistake to say that court was not a court of assize. He submitted, in conclusion, that those pleas had been most inartificially drawn up. It was only necessary to state the objection in order to point out the impossibility of sustaining such a plea. It said that four witnesses had been examined before the grand jury; but it did not state the names of those witnesses, or allege that they were unknown, which might possibly be the case. The rule of law was, that if they did not know the names of the parties indorsed on the indictment, they should, *à fortiori*, in a plea in abatement, state that the parties were unknown; they had in that dilatory plea omitted to state that the witnesses had not been affirmed in court, as they might have been. He mentioned that, merely to show that in point of form it was as untenable as it was illegal in point of law.

Sir Colman O'Loghlen, in support of his plea, cited the authority of Lord Kenyon, that it was no matter how often an error might have been committed by witnesses being sworn before grand juries, and not in open court; still, if the law did not allow such a course to be taken, it should not be continued, no matter how long the practice might have existed. He referred to a bead-roll of cases from the English law, that, unless the witnesses were sworn before being examined by the grand jury, any indictment found by them was bad; and urged forcibly, on the precise plain words, that the latter statute only partially repealed the former act on that point, that the latter statute only applies to assizes and sessions.

"A court of assize had acquired, in time, a specific technical meaning, which the Court of Queen's Bench was not. The statute law recognised this distinction. In 60 Geo. 3. c. 4., the legislature made a clear distinction between the Queen's Bench and the courts of assize. The same distinction, too, occurred in the grand jury act, the 6 & 7 Wm. 4. c. 116., under which grand juries were at present constituted. There the legislature thought it necessary to enact that, *for the purposes of the act*, the word 'assizes' should include and import 'presenting term,' and that the words 'judge of assize' should include 'judge of the Queen's Bench.' Now what was the necessity of that enactment, unless the legislature thought that the word 'assizes' did not of itself include the Queen's Bench? It followed that the 'clerk of the Crown at the assizes' did not include the 'clerk of the Crown in the Queen's Bench.' He denied that the judges ought to consider the policy of the act. The statute ought to be construed strictly; first, because it was a penal statute, and contrary to the modern policy of legislature, inasmuch as it deprived the accused of the means of knowing the names of his accusers; secondly, because it took away the common-law right, and created a new jurisdiction. Statutes of that description were never to have an equitable construction. In Dwarris, 654., it was stated that 'the mere title of an act is the most unsafe guide to assist us in ascertaining, even in the most general way, the scope and purport of the act.' But even admitting, for argument sake, that the title may be brought in, if of a doubtful nature, in order to afford some aid in the construction of it; yet there was nothing in the title of the present act to militate against the construction that the Traversers sought to put upon the statute. They held that the words 'grand juries in Ireland,' in the enacting part of the statute, derived a limited construction from the words which immediately followed, and that they meant 'grand juries at assizes and sessions in Ireland,' and did not include grand juries at 'a presenting term.' There was nothing in the title of the present act to contradict that construction. It was true that the title was 'An Act to empower the Foreman or any other Member of *grand Juries in Ireland* to administer

Oaths,' &c. But the titles of the other grand jury acts were equally general, though they only applied to grand juries at assizes and sessions, and not to grand juries at presenting terms."

After citing a variety of statutes in elucidation of this, Sir Colman submitted that, "having regard to the context of the entire act, and taking into consideration the manifest intention of the legislature in introducing that act, it was clearly obvious that the framers of the statute intended that the words 'in all cases' should be construed as meaning all cases, *i. e.* all crimes *in courts* of assize and quarter sessions. The rule was quite settled, that if an affirmative statute which is introductory of a new law direct a new thing to be done in a certain manner, that even in the absence from the statute of any negative words (such as those he had imagined to be supplied), it shall not and cannot be done in any other manner. Even if the mischief which it was the object of 1 & 2 Vict. to remove was considered, the act could not be thought to refer to the term grand juries. Prosecutions were seldom instituted in the Queen's Bench, and therefore the mischief in that court was but small. At assizes and sessions, however, the mischief was of every-day occurrence, and that most probably was what the legislature had it in contemplation to remedy. If the construction of the present act for which the Attorney-General contended were the true construction, there would be many superfluous phrases in the statute. But they should be equally careful in excluding words which were essential to the sense, and they would be excluding sensible and operative words were they to exclude the words 'clerk of the Crown at assize.' The omission of a reference to the Queen's Bench might have been designed and deliberate, or it might have arisen merely from the fact of the legislature's attention not having been called to that court; but, let this be how it may, their lordships were bound to take the act as they found it; and it was not (he said it most respectfully) the province of the Court to supply a *casus omissus*. It was not *admissible* that they should take upon them to supply a *casus omissus*, for by doing so, they would be departing from the legitimate sphere of their duty,

and would be making laws instead of administering them. The Court were not at all justified in taking consequences into their consideration. They had nothing to do with consequences. The technical objection to the plea came, he must again declare, with exceedingly bad grace from the Attorney-General, who could not but be aware of this fact, that the Traversers applied for the names of the witnesses, and that they declared upon affidavit that the names were necessary to their defence; but the motion was strenuously opposed by the learned Attorney-General, and the Court decided that that they should not get them. And this objection was made when they were not allowed to know who they were — whether the witnesses were Quakers or not."

Mr. Moore argued pointedly that no lawyer could conceive the passage meant the Queen's Bench. If he said that a particular person was indicted at the assizes, and that he meant by that that he had been indicted before the Queen's Bench, he would be laughed at.

The Solicitor-General remarked that the act expressly stated, "Be it enacted that *in all cases*," and, in perversion alike of sense and language, they wanted to insist that these words, "all cases," should be construed to mean "certain cases." The act referred to all courts.

On the following day the Chief Justice pronounced the unanimous decision of the Court, that the construction of the act of parliament given by the officers of the Crown was the right and true one. "The evil which the 56 Geo. 3. was passed to reform, was one that prevailed as much in the city of Dublin as in any part of the country — in one part of Ireland as much as in another, and requiring a general application of the act of parliament to correct that abuse in one part of Ireland, Dublin included, as in another. What sort of fatuity is to be imposed upon the legislature who were to pass an act of parliament, and yet, according to their views of the subject, do it in such a way as to frustrate the object they had in view? The act goes on to say, 'that in all cases where bills of indictment are to be laid before grand juries in Ireland for their consideration, the clerk of the Crown at assizes, and the clerk of the peace at quarter sessions, or

his or their deputy, shall indorse upon the back of the bill of indictment the names of the witnesses.' That is, where such officers exist; but that is not in exclusion of other cases where similar proper officers exist, though their offices are not distinctly enumerated in the act of parliament. It appears to me to be a further argument in support of the same view of the subject, that there is an express provision that the oath that is to be administered by the grand jury in pursuance of this act, is not to be in addition to but in lieu of the oath that was to be administered under the 56 Geo. 3. It appears to me to be completely a substitution, and, therefore, it necessarily follows that it is to be as extensive as the oath in lieu of which it is to be substituted. It is to be a complete and entire substitution, not an addition."

Mr. Justice Perrin assented, but added this sting to his judgment, that "if he were satisfied that the reply to the special demurrer was well founded — it would go very far indeed to convince him that the rule of that court made on a former day was decidedly erroneous in refusing the names of the witnesses to the accused parties if that was necessary to make their plea good, and indeed the argument, as it was, had gone very far to shake his confidence in that decision."

Judgment of *respondeat ouster* having been given, the Attorney-General suggested that the Traversers should be called in to plead instanter. Mr. Hatchell and Mr. Whiteside contended that they were entitled to a four-day rule to plead over in chief; but this ingenious effort to obtain still further time was scouted, a whole fortnight having elapsed since the defendants had appeared. They all pleaded Not Guilty, and the vigilant first law-officer of the Crown lost not a moment in giving notice that he should apply for a trial at bar on Monday the 11th of December. Previously to making this motion, he was served with a notice that the defendants would move that the trial be fixed for the 1st of February, upon the grounds that the jury lists were then under revision before the Recorder, and would be completed on the following Tuesday, and would come into operation on the 1st of January, 1844; and also on the grounds of the magnitude and importance of the cause, the voluminous nature of the

indictment, and the vast variety of matters alleged against the Traversers, and the impossibility of being prepared to defend themselves within a shorter period. Mr. Henn relied on the very imperfect state of the special jury lists, which only contained the names of 388 qualified to serve, and of those 388 but 53 who professed the Roman Catholic religion: that a special session was then being held before the Recorder of Dublin for the purpose of correcting the lists and forming a correct jurors' book. Mr. Shaw had expressed a confident hope, as this was the first *bonâ fide* revision, that he would be enabled at last to prepare a full and complete list. A fair, impartial, and satisfactory trial could not be had, according to the affidavits, until the revision then in progress was perfected. The Recorder had only got through one fourth of the list, and they found the result of that revision to be, that on the special jury list there were 513 qualified persons when the Recorder had gone through one fourth. On the present there were only 388, of whom 70 were disqualified: 100 Catholics were already put on the list, though there were only 23 on the list before. "It was impossible," said Mr. Henn, "that the object of the Attorney-General could be to procure, *per fas aut nefas*, a conviction. He was as much interested as any other person that the trial should not only be conducted to a just result, but so conducted as to leave no doubt on the public mind that justice had been done; and if a trial took place, with a jury selected from such a pannel, and if the defendants were forced on their trial in such a way that it was impossible they could be prepared for their defence, the verdict, if a conviction, would be a mischievous one, and not conducive to justice."

Eager as the Attorney-General was for a speedy decision, he could not, in justice to himself, the government, or the prisoner, refuse a request urged with such importunity, and with so much reason to support it. He complained of the introduction of topics which should have been omitted; of the attempts which had been made to prejudice the administration of justice, and to poison the public mind pending the prosecutions by those whose counsel deprecated it: and denied the accuracy of the position that an impartial trial

could not be had with the present jury list. "It was the list of names from which, in every case, civil and criminal, that came to trial since the 1st of January last, the juries had been selected, and yet his learned friend now stated to the Court and the public that a book and a list had been made out without the slightest reference to the present trial, or without the possibility of the parties who made it out contemplating the present trial, and without a single fact having arisen which had reference to the present trial. He thought, if one were to make an observation on the subject at all, that the jurors' books that were made out when the pending prosecutions were not thought of, admitted of a much more favourable observation than could be made respecting a list, however respectable it might be, which had been made out during the excitement of the present prosecution, and when, without adverting to it as a cause of complaint, the defendants' attorneys were in some respects, which he would not then discuss, engaged in the steps taken for carrying out that revision. Still he would not afford an opportunity to the most scrupulous to say, though he had coerced the defendants at length to plead, that he had pressed them forward improperly. He had reluctantly come to the conclusion, after the statements that had been made on oath, and the facts stated in those affidavits, which he should add were of great importance, and after, he believed, as anxious a consideration as ever was brought to bear on a case in the mind of a public man, that he would best discharge his duty if he were not to oppose a postponement of the trial until the second day of the approaching term."

To this day he very properly adhered, notwithstanding the urgent entreaty of Mr. Pigot for further procrastination. The same drama of delay was played on the next day, but with fresh actors to perform the leading parts, for fear of weariness. Mr. O'Hagan moved for a list of the witnesses indorsed on the back of the indictment, and founded his claim on the special circumstances of the case, the affidavits of professional persons, the spirit and tendency of modern legislation, and the established practice of the English courts. "How is the Traverser to prepare if he does not know his accusers? Suppose

that persons are brought from the extremities of the island, who, in their own districts, have forfeited all claim to credit by their evil life and conversation, how is he on the instant to confront them? In England we shall prove that persons charged with misdemeanours have always the names of the witnesses for the Crown; and the legislature, in the statute of treasons, has given to the accused not only the names of the witnesses in the indictment, but the names of all the witnesses to be examined on the trial. To this he would advert, that their lordships had been called on to hold the plea in abatement of the defendant bad, because it did not state the names of the witnesses, or that they were unknown. The names could not be stated, because, at the instance of the Crown, they had been refused to the Traverser; neither could it be said that all the witnesses were unknown, for one of them was known, had sworn an information, and had been referred to specially by the learned judge who charged the grand jury. On circuit no difficulty ever arises, for the original indictment is given to the prisoner's counsel, with the names upon it, as a matter of course, and the question was never before submitted to the Queen's Bench. Is it not plain, therefore, that there is no practice here? If the application was never granted it has never been refused; the point has not been mooted — the judges have made no decision upon it, and there is, in fact, no practice worthy of the name. In this state of things, it is proper to inquire what is the practice of the English courts? That practice is decisive in favour of the Traverser. Mr. Coppock, a London attorney of experience, had sworn that in all cases of indictments for conspiracies or misdemeanours, the office copy of every indictment supplied by the Crown Office to any person applying for a copy of such indictment, contains the caption, and also the names of the witnesses examined before the grand jury on the finding of the said indictment; and that such practice is invariable, and is well known to be the usual and common practice in the Crown Office in England upon all indictments for conspiracies and misdemeanours. Should a privilege, which may continually avail to the prevention of injustice — which may enable the innocent man to

confront the perjured accuser, and rely on the infamy of that accuser's life as the best answer to his false swearing — through which alone it may be possible, in many cases, to expose misrepresentation, and ascertain the truth — should such a privilege be refused on any mere suggestion of imaginary mischiefs, whilst reason and humanity require that it should be yielded, and the improving spirit of modern legislation, and the settled custom of the English courts, combine to authorise its concession. And, finally, would it not be well for the law officers of the Crown to consider, having regard to the peculiar character and circumstances of this prosecution, whether it be politic or wise to proclaim to the country, that an Irishman, charged with a political offence, shall not possess in Dublin the same immunities and means of protection, which would guard the liberty of an Englishman, charged with the like offence in Westminster Hall?"

The application thus strenuously urged was as vigorously resisted. "What the Court was now called upon to do was brought before them on a former occasion, and at no period in Ireland had such an application been complied with. Even in the case of high treason, the highest offence known to the law, where privileges were allowed to the party that existed in no other case, the names of the witnesses, &c., were only to be given ten days before the trial. Were their lordships, then, to be called upon to make such a precedent in cases of misdemeanour? He submitted that they should not, and from the consequences that would arise from it to the administration of justice in Ireland he felt it to be his duty not to assent to it in the present case. The practice of the Court of Queen's Bench in England, he submitted, was not to be known by an affidavit, but by a certificate from the Crown Office in England. If the Court were inclined to make an order in a case of first impressions, it was not, he submitted, on such swearing the Court would make the first order that ever was made in this country of a similar nature."

The Solicitor-General asked why they did not go to the Crown Office in England, and get a certificate of the practice from the proper officer?

Mr. Whiteside said, he was quite willing to let the application stand on the result of a communication from the clerk of the Crown in Dublin to the clerk of the Crown in Westminster.

The Solicitor-General declined acceding to the proposal, and, after some further remarks, concluded by submitting the application should be refused.

The Chief Justice gave a reason peculiarly applicable to Ireland, which weighed with the majority of the Court in refusing the application. "There was a very cogent motive why a copy of the list of witnesses should not be furnished to the accused, though he was to be furnished with a copy of the indictment against him, and a copy of the charges against him. The statute law of the country had furnished melancholy principles which were to be called into action with reference to this position. Witnesses had been murdered — witnesses had been maimed — witnesses had been intimidated — witnesses had been bribed, and by all those means the administration of justice had been frustrated and defeated instead of being promoted by the furnishing of witnesses' names. By the statute of Anne the provision was made that the names and additions of the jurors, and the names and additions of the witnesses, should be furnished to the prisoner? but when? Ten days before the trial. Was that a precedent to induce the Court, without sufficient reason being assigned, to apply that as a principle to make an order for the furnishing of the names of witnesses in this case of misdemeanour at a period of fifty or sixty days before the trial? It appeared to him," said the Chief Justice, "that the rule was a most useful and sensible one for the protection of witnesses. It was no small matter for the witnesses to be exhibited in the public papers day after day, and night after night, and their characters discussed and vilified. That was one danger that might be apprehended; and the other danger was that unfortunate people might be put out of the way. Not a single case had been produced to them to show what the practice was in England, or on what that practice was founded. If that were the practice, and if he were driven to the necessity of deciding by what practice he should abide

— regretting, as he should do most extremely, the existence of a difference of practice between the two courts — still he should, until he saw a better reason than had been yet laid before him, abide by the practice in this country."

Mr. Justice Perrin differed from the rest of the Court, considering that the defence might depend much on the veracity and character of the witnesses who are to be produced for the prosecution, and a knowledge of the names of those witnesses was therefore of the greatest importance to the Traverser and those engaged for him. It appeared to him that the fact of the Traverser having got the informations, furnished an additional reason why he should get the names on the indictment, in order that he might know whether it was likely additional proof had been given before the grand jury against him.

Mr. Whiteside, after this adverse judgment, made a shrewd attempt at a compromise. "They were now content, the trial being fixed for the 15th of January, if their lordships would give them an order to get the list of witnesses ten days before the trial — say the 5th of January."

The Attorney-General resisted this proposition, on the grounds that it would be introducing a new practice here; and as the Court had refused the motion made on the part of the Traverser, he would stand on that decision.

During the interval between the Terms the attention of both parties was earnestly directed to the Recorder's Court, and counsel attended to discuss each juryman's name before insertion on the roll. A most unfortunate accident occurred to mar the completeness of these lists. After correcting, signing, and handing them over separately, the Recorder departed for England, and on examining the Special Jurors book it was discovered that one of the lists containing fifty-nine names had not been copied, having been destroyed or lost subsequent to its transmission. In consequence of this omission, which left out nearly one tenth of the special jurors, the counsel for the Traversers protested against the ballot proceeding. A special jury was struck, however, the

Crown officer thinking rightly that he had no authority to delay reducing the list, and eleven Roman Catholics, who were also stated to be repealers, challenged on the part of the Crown. An aggregate meeting of Roman Catholics was held to resent this supposed insult on their creed, and one of the Traversers, the Reverend Mr. Tyrrell, having died from erysipelas, a public funeral was ordered for the *martyr*, his brother defendants supporting the coffin. Every incident that could be taken advantage of was seized with avidity, to prejudice and inflame the minds of the people against the prosecution. To strengthen the prevalent impression of the people being assailed in the person of their champion, O'Connell held a levee on the morning of the trial, January 15, and proceeded to court in state. On the clerk of the Crown directing the crier to call over the names of the defendants, when he came to the Reverend Peter James Tyrrell, the attorney, Mr. Cantwell, interposed, "My Lords, I was attorney for the Reverend Peter James Tyrrell, and I have to state to you that the reverend defendant has been summoned before the Judge of judges. His soul and body are alike beyond the power of this court."

Mr. Ford. "I propose, my lords, that the witnesses' chair should be changed from its present position in the centre of the table to the end of it, as it is necessary for the counsel engaged in the cross-examination of witnesses to see their faces and hear their replies, which they cannot well do in the present position of the chair. I move, therefore, my lords, that the chair be changed.

Chief Justice. It appears to be a fixture.

Mr. Ford. No, my lord, it is moveable.

Chief Justice. Then you need not make a motion about it!

Before the jury were sworn, Sir Colman O'Loghlen handed in a challenge to the array on account of a fraudulent omission of fifty-nine names from the book of special jurors by some person unknown, without the privity of Daniel O'Connell. The Attorney-General demurred, and argued the question with great ability. "In this argumentative challenge, or rather appeal, it was complained that the Recorder did not cause to be made out one general list con-

taining the names of ALL persons allowed, ranged according to their rank and property, and that he did not deliver any such list so arranged to the clerk of the peace to copy. This was their argument; but it was one which might with safety be made by them, if there had been the omission accidentally or otherwise of a solitary name, or if a peer's son had been transposed accidentally for a baronet. The Court, forsooth, were to nullify that record, they were to declare the proceedings null and void *in toto*, because some unknown person, whom nobody could suggest the name of, may have erased, or did, as the challenge alleged, fraudulently perhaps, erase a name, or omit a name on the list. Such being the argument of the other side, if the Court were to assent, every jury to be struck in Dublin or elsewhere in the year 1844 should be struck from the jurors' book for the year 1843 — that was, no doubt, rather a singular argument to fall from the other side after the imputation sought to be cast upon that very book. Their argument was this, that there should be no trial at all unless a trial by the jury book for 1843. There was no mode suggested by which the book for the year 1844 was to be set right; and the Crown having acquiesced in the postponement of that trial, with a view of having a special jury struck from a greater number, they were encountered now by a statement of some unknown persons having done some act, which (although not set out in Mr. Daniel O'Connell's challenge) the other traversers declared had been done to prejudice him. If the Court were to set aside the whole of these proceedings, because some unknown person may, for some object of his own, have gained access to the general list, and may have designedly omitted some of the names particularly specified on the parish lists; it would destroy all proceedings in a court of justice if it was in the power of any party to nullify the proceedings by an irregularity of this kind. It is exactly the case of the King *v.* Edmonds, 4 Barnwell and Alderson, p. 471., in England. The Court decided in that case that challenge for indifferency of the master of the Crown Office should not lie to the array.

Sir Colman O'Loghlen contended that a fraudulent pro-

ceeding by any party vitiated the pannel. It would be vitiated by the impropriety of the sheriff, and why not, then, by the improper conduct of any other party?

Mr. Fitzgibbon endeavoured to season a dry legal argument with personalities. Some individual, I care not who, has been dexterous enough to take away a portion of the list revised by the Recorder — it may be his footman — and, in consequence, fifty-nine names have been omitted, near a tenth of the whole pannel. I'll assume that it has been done by the Recorder's footman. Now, what the Attorney General says is, if so, he ought to be punished; but what does the law say? it says to the Recorder — you shall cause a correct general list to be made out and delivered; it does not say by what means, but you (the Recorder) shall do it. The question is, did he cause that to be done? It is plain he did not; some person unknown to the crown, I won't say unknown to the Recorder, has suppressed a number of those names. He (the Recorder) should not have left those lists accessible to any one who would not take as much care of them as he would himself, but he has left them to the mercy of a person who has decimated them, by taking away one tenth of them.

The Solicitor-General protested strongly against such insinuations. "Why is it not so stated in the challenge that the omission occurred through the fraud or default of the Recorder, or some one in his employment, whose name is unknown? If it had been so averred, we might fairly be called on to go before a jury, and rescue the character of the Recorder. Supposing that the sheriff had added the fifty-nine names which it was asserted were allowed by the Recorder, and should have been on the list, why then indeed a legal cause of challenge would have arisen, and no doubt the traversers would have taken advantage of it. Had that occurred the Crown would indeed have been in a difficulty. The Attorney-General was censured for not adopting an erroneous excuse."

Justice Perrin. If in copying out from a regular list an error was made, and that error discovered, might not the error be corrected after delivery to the sheriff?

The *Solicitor-General* said he thought not. A proposal made with great apparent fairness by Mr. Moore, but which, if not positively illegal, and cured by consent, must have produced serious vexation and delay, excited the ire of the Attorney-General. The dialogue possesses interest.

Mr. Moore, Q. C. then said that he was instructed on the part of the traversers to enter into a consent that the lists should be sent back to the Recorder in order that he might insert the names which have been improperly omitted, and that then a new special jury should be struck at once, and the trial proceeded with.

The *Attorney-General.* I object altogether to the proposal of my learned friend. I am astonished that he should make a proposal which he ought to know could not possibly be complied with; there is no power under the statute by which it could be done; the alteration would affect every proceeding taken during the whole year, and he must have known that it was illegal, and that if any person was tried under that new list it would be erroneous, and a party unbound by the consent could object to the proceedings. I should not be fit to hold my office for one hour if I were to permit this illegal course to be taken.

Mr. Moore, Q. C. The Attorney-General has very grossly misconceived the proposition which I made. I am surprised he should have thought that I should exhibit such monstrous ignorance as to make a proposition, the effect of which would be such as he states. I disclaim all intention of the kind. I made a proposition in perfect good faith, in consequence of instructions I received from my clients. I will not reply to his observation in reference to myself; but in making my proposition I did that which I conceive could be done without displaying that degree of impropriety or ignorance of my proposition which he has thought proper to allude to. [*Much cheering followed these remarks.*]

The *Attorney-General.* My lords, if again in the course of these proceedings any persons in this Court shall conduct themselves in the manner we have just heard, I will beg leave to request that your lordships will order the gallery to be cleared. The learned counsel on the other side called

upon me to do that which is illegal, to consent to the jurors' book being amended by the Recorder; and I say that cannot be legally done. I said it would affect the legality of every judicial proceeding of this nature in 1844, and I reiterate that assertion.

The *Chief Justice* delivered judgment. The majority of the Court in this case were of opinion that the demurrer must be allowed, and consequently that the challenge must be overruled. There was no imputation in this challenge that the omission of names which it complained of having occurred on the part of the Recorder, was the consequence of wilful impropriety or corruption; nor, in the argument of the case had the slightest wilful impropriety been imputed to that highly respectable individual, the Recorder of Dublin. The ground of challenge in the case before them was not unindifference in the sheriff, and yet Lord Coke says that want of unindifference in the elisor or sheriff is the only cause of challenge to the array. But the extraordinary challenge they adjudicate on was the want of impartiality in some unknown person, who was supposed to have had access to the jury list. The person committing the fraudulent act is not named—the fraud itself not distinctly set out.

Mr. Justice Perrin differed from the rest of the Court, but acquitted the Recorder of all blame. "It matters not whether he hands it in himself or sends it in, for he must be taken to be ignorant of the omission; but the injury is not the less to the parties who want a full jury—the loss, as far as they are concerned, is as great as if the Recorder were conscious of it. If we hold that an alteration or suppression of this sort, made by those persons who must be employed to do a particular duty, and, unknown to the officer, is incurable and not to vitiate the act purporting to be done by the judge or superior officer, I am at a loss to understand what security there is for the purity of the jurors' book. It seems to me that if such a thing was practised, and that it came to the ears of the Justice or Recorder that not only the first thing he would do, but the first thing he would be bound to do, would be to go to the sheriff with the real list, and call upon him to repudiate the fabricated one, and correct his book

according to the true one. There seems to be some difficulty suggested as to whether he could do that. It strikes me that, in my humble judgment, it is not only what he would do, but what it would be his bounden duty to do. Much had been said about the inconvenience which would result from admitting the present challenge, as thereby an embarrassing precedent would be established. But he did not think that they (the judges) ought to regard the consequences of their decisions, except in as far as they made them studious and anxious that their decisions should be well-founded, and rest upon sound principles of law. Further than this, however, they were not to look."

This argument had exhausted the day, and much merriment was excited on the following morning by the reluctance of the special jurors to make answer to their names, as the trial involved the prospect of some weeks' imprisonment, and by their various excuses.

The traversers wished to take their chance of no verdict by coercing invalids into the jury-box, and the following cross-examination of a medical man, who spoke to the illness of Mr. Parker, testified at once this anxiety, and the bad taste of Counsel.

Chief Justice. How long have you attended Mr. Parker?

Mr. Vance. Three years, my lord.

Chief Justice. What is your opinion of his capability to serve as a juror in this case?

Mr. Vance. I think it might be fatal to him, as he has a tendency to a complaint in his head.

Mr. M'Donogh. Tell me, sir, which do you or Mr. Parker look the more sickly man?

Mr. Vance. I think you could answer that better than I.

Mr. M'Donogh. What do you say is the matter with him?

Mr. Vance. He is very nervous.

Mr. M'Donogh. What would you order for nervousness?

Mr. Vance. I'd order a sedative.

Mr. M'Donogh. Did you see him after dinner?

Mr. Vance. I did.

Mr. M'Donogh. Was he excited then?

Mr. Vance. Very much so (laughter).

The Attorney-General. What is laughed at here is, that he has had two apoplectic attacks; and this is the subject of ridicule.

Mr. M'Donogh. Oh, there are a great many things in this court which are very fit subjects for laughter and ridicule.

Chief Justice. What is your opinion of his state of health?

Mr. Vance. I think he could not serve as a juror on the present occasion without endangering his life.

Mr. Parker was then passed over.

A jury being at length assembled, and Mr. Napier having opened the pleadings,

The Attorney-General explained the general nature of the charge with great clearness: — Gentlemen, you have been empannelled on the present occasion, to perform the important duty of deciding upon the innocence or the guilt of the several defendants in this case; and I am sure, it is not necessary for me to impress upon your minds the necessity of giving your anxious and your undivided attention to this momentous cause. I shall take leave again to call your attention to the general nature of the charge which is brought against the defendants. They stand indicted for having conspired and confederated together, to raise and create discontent and disaffection amongst her Majesty's subjects, and to excite them to hatred and contempt of the government and constitution of this realm as by law established; and to unlawful and to seditious opposition to the said government and constitution; and to stir up hatred, jealousy, and ill-will, between different classes of her Majesty's subjects, and especially to promote amongst her Majesty's subjects in Ireland, feelings of ill-will and hostility towards and against her Majesty's subjects in England; and to excite discontent and disaffection in the army; and to cause large numbers of persons to meet together at different times, and at different places, for the unlawful purpose of obtaining, by means of the intimidation to be thereby created, and by means of the exhibition and demonstration of great physical force at such meetings, changes and alterations in the government, laws, and constitution of this realm, as by law established; and particularly by those means to bring about and accomplish a dissolution of the

legislative union between Great Britain and Ireland; and also by means of inflammatory and seditious speeches and addresses, and by seditious publications, to intimidate parliament, and thereby bring about changes and alterations in the laws and constitution of this realm, as by law established; and to bring into hatred and disrepute the tribunals established for the administration of justice, and to diminish the confidence of the Queen's subjects in the administration of the law therein, and to assume and usurp the prerogative of the Crown in the establishment of courts for the administration of the law."

A very learned case-lawyer, and armed *cap-à-pie* with authorities, he sometimes overlaid his definition of the law of conspiracy with cases from Carrington and Payne, and cited authorities to establish first principles, but interspersed his quotations with a shrewd application to the conspiracy charged. "You will be told, when the defence opens in this case, that the meetings dispersed peaceably. The separation of those meetings peaceably, and the intention that they should disperse peaceably, is a formidable part of this conspiracy. It was because the parties knew that 'the hour of England's infirmity' had not arrived, which is to be that of 'Ireland's opportunity.' 'Will you be ready when I want you again?' was an inquiry made by one of the defendants at some of the meetings. If the meetings had not dispersed peaceably, the conspiracy would necessarily have been broken up at a much earlier period, part of the system being to have the organisation complete from north to south, and from east to west, before the signal should be given."

After citing the dicta of the English judges in Hunt's case, he asked with much point, "Are we to be told, and is it consistent with what these learned judges lay down, that you may have hundreds of thousands of persons assembled, whose course of proceedings is to be regulated by the directions which they may receive from one individual, who may tell them to separate peaceably; who may do so for the purpose of carrying out further the designs of the conspiracy, aware that the organisation is not sufficiently prepared for him to withdraw completely the mask which ill conceals his designs? But I

deny that the circumstance of the meetings being peaceable, or concluding peaceably, when assembled under the control of one mind, which may give them a direction one way or the other, constitutes a defence for them."

He traced the loyal Repeal Association, under all its phases, to the year 1843, proving that it had in steady contemplation from the first the repeal of the Union, and drew a clear and able distinction between meetings peaceably convened by different parties for one common object, and the continuous collection of physical strength, dispersing tranquilly in obedience to the commands of one individual. "'Men with rebellion in their hearts, occasionally use words recommending peace, order, and tranquillity, and obedience to the law.' And they do so for obvious purposes. If they do not continue to do so up to the point at which they may venture to throw off the mask, they would defeat their own designs; they could not carry on the organisation till it was complete; and they must, for the purpose of effecting their objects, illegal as they may be, inculcate peace; they must preach tranquillity until they have wound up the public mind, and have organised the country from one extremity to the other—until, in the language of one of the publications I shall read, the country is ready for liberty."

This organised system of peaceful agitation had long been the curse of the country. "You might just as well expect the natural body to be in a state of health, operated on by incessant stimulants, as that this country could be in a state of peace, or tranquillity, or happiness, with this constant principle of agitation carried on throughout the country from year to year."

The devices on the cards that were issued to the different members of the association, Associates, Members, and Volunteers, had been drawn with much poetical talent, for the purpose of inflaming their minds, yet evading the act against pass-words or signs, and proved the object of the confederacy. "There is nothing very particular on this card; there is a shamrock at the head, with the words 'Catholic, Dissenter, and Protestant,' and '*quis separabit*;'—there is the year '1782'—lower down near the bottom, a view of the Bank of

Ireland, formerly the parliament house, with the words 'It was and shall be.' In one corner of the members' card you will find the words 'Clontarf, 23rd of April, 1014,' and in the opposite corner, 'Benburb, 5th of June, 1645;' at the bottom, in one corner, an Irish name, which, translated, means 'the Mouth of the Yellow Ford, 10th August, 1598;' and in the other, 'Limerick, 9th to the 31st of August, 1690.'"

A printed explanation was furnished to the members with the card, and that points out the reason why these four names of different parties in Ireland were selected. "They were the sites of battles in which the Irish were successful; where the Danes, in the one case, and the English (or as the defendants call them, 'the Saxon foreigners'), in the other, were defeated in battle by the Irish. This is the association preaching peace and tranquillity; this is the association which never thought of exciting discontent between different classes of her Majesty's subjects: their card of membership being composed and engraved with the view to rake up the transactions of centuries past—with a view to incite the descendants of the Irish, in the present day, to hatred of the Saxon foreigner, whose ancestor, as we are told, 'polluted this country with his accursed foot.' I may as well state here, for your information, as the paper adopted by the association gives it; that at the battle of Clontarf, the illustrious Brian Boroihme, as he is called, with an Irish army inferior in number, defeated the Danes. In the second, the battle of the Mouth of the Yellow Ford, the person they call the gallant Hugh Ferdinand O'Neill, appears to have commanded the Irish; at the battle of Benburb, Owen Rowe O'Neill, whose name you will hear of just now; and General Saarsfield commanded at the siege of Limerick. Now, gentlemen, on one of the pillars at the side of this card, there is a statement of the geographical size of Ireland, contrasting it with Portugal, Norway, Naples, Denmark, and several other states, Greece, Switzerland, Holland, and Belgium; the comparative population is also given, and the card then states that Ireland has not a parliament. It then states the yearly revenue, the exports, the sum supplied during the last great

war against France; it states that the first general, and two-thirds of the men and officers of the English army and navy, on that occasion were Irishmen, and reiterates that Ireland has not a parliament. There are two flags painted on the card, the one with the shamrock containing on it the same motto that is upon the associate's card. On the other flag is a device, which is described as the sun bursting from behind a cloud, which, I believe, was the ancient banner of Ireland. In the middle is a small map of Ireland; and I now pray your attention to what is on the scroll upon the top of this card; it runs thus — 'Resolved unanimously, that a claim of any body of men, other than the King, Lords, and Commons of Ireland, to make laws to bind this kingdom, is unconstitutional, illegal, and a grievance. Dungannon Volunteers, 15th February, 1782.'"

"There was a clear distinction between the two periods; when Ireland had its separate parliament, the volunteers denied the power of the English parliament, and the Constitution supported their denial, to bind Ireland by its laws, and is it now said, or will it be said, that because in 1782 the Irish volunteers denied the right of the English parliament, this country being unrepresented therein, to make laws to bind Ireland, which had a legislature of its own, that is to justify a statement on the card of the association — that at this time, at this present period, the legislature of the united kingdom has not authority to make laws to bind both countries? I confidently assert, that a proposition denying the authority of the legislature of the united kingdom to makes law to bind Ireland is illegal. On the scroll at the bottom of the card will be found these words — 'You may make the union a law, but you cannot make it binding on conscience;' and under that are these words — 'Saurin's speech.' I dare say, in the course of this case, you will hear extracts not only from that speech of Mr. Saurin, but also from speeches delivered by Lord Plunket, and by the late Lord Chief Justice of this Court; but the persons who so constantly bring those opinions before their deluded followers, always omit to state this — that these were opinions delivered by those distinguished persons in their places in

the Irish House of Commons before the passing of the act of union, and that none such ever fell from any of them after the act of union had become the law of the land."

The Attorney General then exhibited the volunteer's card containing a likeness of Mr. O'Connell. "These being the three classes of persons connected with the association, namely, associates, members, and volunteers, it was necessary, for the organisation of the people of the country, that there should be officers of the society; and accordingly there are inspectors, provincial inspectors, baronial inspectors, repeal wardens, and collectors. The repeal wardens, by the rules of the association, were to be appointed at the recommendation of the clergyman of the parish. Among the most active members of the association were the repeal wardens, one of whose duties was to take care that there should be transmitted from the association to each locality a weekly newspaper for every two hundred associates. The object of the repeal association was that the sedition, which the repeal papers traded in, should be circulated amongst as many persons as possible in the district. There was nothing new in endeavouring to make the press the medium of attaining a revolution. It was by means of the French press, and the celebrated organ, *L'Ami du Peuple*, that the French nation, and the minds of the people there, were poisoned against the government; and in this country, shortly previous to the rebellion of 1798, the same course was adopted by the newspaper then well known as *The Press*. I trust that the present conspiracy has been checked in sufficient time, to prevent such consequences as followed on those occasions from the licentiousness of the press. The summary of the duties of these repeal wardens was emphatically contained in Mr. Duffy's newspaper. 'The organisation must not only be carried everywhere, but it must be revised everywhere. If the repeal wardens of any district do not see that the organisation, division, and training of all the repealers in their district is perfect, these wardens have not finished their duty, — that district is not ready for liberty.'"

In calling attention to the most important of the meetings, at which nearly two millions had assembled, the Attorney

General commenced with the meeting of the association on the 13th February, and traced them in chronological order, reading the most striking passages from the speeches of Mr. O'Connell, as he proceeded, together with paragraphs from the repeal newspapers, and adding to the remarkable text a most bitter commentary. At the head quarters of agitation, its grand Coryphæus declared "The great mistake of Napoleon was that he under-valued Ireland. If instead of taking an army to Egypt or Russia, he had sent forty thousand men to Ireland, what would be the consequence? Would not the question be raised amongst them, whether they would not be better under French than under English dominion? What would be the answer to that question? It would be given in the voice of millions, and would sever the connexion in less time than he had been addressing them. There was no country upon the face of the earth so strong in her natural resources as Ireland. The roads were a kind of defiles; and if the congregated powers of Russia endeavoured to pour out its force upon Ireland, and if Irishmen were led by their own countrymen, they would fling the invaders from their cliffs into the sea, and thus disenthral the land from her oppressors."

It did not require a great stretch of imagination to read England for Russia. How could Russia be the oppressor of Ireland? To further the cause of disaffection, Mr. Barrett's paper, the *Pilot*, reported the speech of a Mr. Tyler, the son of the President of the United States. "When we see that that people" (that is, the Irish people) "amount to nine millions, — and when we know they are brave in the field, eloquent in the senate, wise in the cabinet, united and determined to be free, we cannot suppose for a moment their freedom is impossible, or even difficult; the libation to freedom must sometimes be quaffed in blood.'

"'The Defendant Barrett declared this to be a bold statesman-like declaration, and asked, 'How can repeal be refused, sustained as the demand is by the people of the United States, with their President at their head. This,' said the speaker indignantly, 'is the poison infused into the minds of the Irish people, who naturally would be obedient to the

laws, if they were permitted to be so, by those mischievous agitators, who have been for so many years deluding the unhappy people of this country.' According to the precedent of the organisation of the people in the early part of 1798, orders were issued to muster the people, the monster meetings increasing in numbers and determination as they proceeded, from the comparatively small number of 30,000 assembled at Trim to the 300,000 at Mullighmast. 'When I think,' said the first of mob orators at Trim, 'of the multitudes that surrounded me to day, when I saw the bright eye, and the ready look, and that elasticity which belongs to Irishmen beyond all other people on the face of the earth; when I saw those by whom I was surrounded on one side, and those who bring the benediction of God upon our cause on the other; when I stand in your presence, men of Meath, and ask you, are you slaves, and will you be content to be slaves? I join in your response, and say to myself, I shall be either in my grave or a freeman.' Striking a more lively strain, he added, 'I would walk from Drogheda and back again to see the man who is blockhead enough to expect any thing else except injustice from an English Parliament towards Ireland.' Perhaps this might be the reason that, during the whole of the last session of parliament, not one petition was presented to parliament from any of these multitudinous meetings.

The charm of oratory was aided by song, and seditious poetry fed the flame that eloquence had kindled. "There is a saying which has almost become a proverb — 'I shall leave to you the making of the laws, if you give to me the writing of the ballads;' and accordingly the writing and publishing of seditious poetry has been recently carried on in this country to a great extent. In the Report of the Committee of Secresy, in the year 1797, I find in the newspaper of the day, *The Press*, ballads and poetry of a most seditious character; and it has been thought advisable, at the present time, to follow the same course, and to spread the poison through the columns of the *Nation*, a paper widely circulated by the Repeal Association. The earliest publication of the *Nation* to which I shall advert, contains one of those poems;

it appeared in the *Nation* newspaper in April last, and is entitled,

'THE MEMORY OF THE DEAD.

I.

'Who fears to speak of Ninety-Eight?
Who blushes at the name?
When cowards mock the patriot's fate,
Who hangs his head for shame?
He's all a knave, or half a slave,
Who slights his country thus;
But a *true* man, like you, man,
Will fill your glass with us.

II.

'We'll drink the memory of the brave,
The faithful and the few —
Some lie far off beyond the wave,
Some sleep in Ireland, too;
All — all are gone — but still lives on
The fame of those who died;
All true men, like you, men,
Remember them with pride.

III.

'Some on the shores of distant lands
Their weary hearts have laid,
And by the stranger's heedless hands
Their lonely graves were made.
But though their clay be far away
Beyond the Atlantic foam —
In true men, like you, men,
Their spirit's still at home.

IV.

'The dust of some is Irish earth;
Among their own they rest;
And the same land that gave them birth
Has caught them to her breast;
And we will pray that from their clay
Full many a race may start
Of true men, like you, men,
To act as brave a part.'"

The Attorney-General, after reciting with great effect these and some additional stanzas, added "that he had found nothing so inflammable (he might have said, or in composition so beautiful,) in the Appendix to the Report of 1797." He then read some prose paragraphs of equal power from the *Nation* for April, in language most racy and in rebellious

sentiments most significant. "'Something is coming. Aye, for good or ill, something is coming, some crisis, some decided swell or ebb of Ireland's fortune, is not far off. The country at length is roused. The heart of Ireland begins to beat strongly. This is a solemn time for all men who can influence the people. Premature insurrections, and needless provocation of party, and military hostility, before now ruined as good hopes as ours. Our enemy may be aroused, and so must Ireland. The county of Tipperary is on its peaceful parade. There are to be two meetings, one in each riding. Neither is meant for show. The multitude will not come to gaze and shout and return to a listless indifference of their country's fate. They will come pledged to purchase its redemption at whatever cost. The two meetings will come off on the 23d and 25th of May, and if we be not misinformed, these days will form a meaning era in the struggle for native liberty. Twenty thousand Tipperary men, who would as soon, if called on, pay their blood as their subscriptions, would not form a bad national guard for Ireland.'

"At the next meeting, that of Mullingar, the Roman Catholic hierarchy made themselves mischievously prominent. Bishop Cantwell said, 'That they had long enough tried in vain to obtain justice from England, and that it was time they should endeavour to right themselves.' And Bishop Higgins said, 'Let the foolish minister threaten, — I dare, I defy him, to crush repeal agitation in the diocese of Ardagh. And if the scaffold were my lot I would bequeath my wrongs to my successor.' But at the dinner which followed the Court Meeting, where half a million had assembled, O'Connell exceeded the militant prelates in vehement vituperation, 'Let them attack us; and if they do, and that some penniless, shoeless Irishman found his way, on the deck of a steamer, to Manchester or St. Giles's, and collected a number of Irishmen about him, and one should ask him "what news?" to which he would reply, "your father was cut down by a dragoon, your mother was shot by a policeman, or your sister ——; but I would not say what has happened to her; she is now a wandering maniac." Let him say but that, and I will ask Peel how many fires would

blaze out in the manufactories of England? No; they must listen to us. They shall not attempt to massacre us. No; the hangman will be disappointed. We are safe, for Ireland reposes in peace. Peaceable arms are extended to heaven, and the time is come when I am enabled to make you that offer. I offer you the repeal of the Union.' "

At Longford, where the peasantry assembled, headed by temperance bands dressed in uniform, where mottoes streamed, "Ireland for the Irish, and the Irish for Ireland," "A population of nine millions is too great to be dragged at the tail of another nation," O'Connell renewed his pantomime menace. "'We shall not be the slightest degree in fault, for we will not violate any law whatever; and I tell you what, if they attack us, then ——'.

"The honourable and learned gentlemen is represented by the repeal press to have here slapped his breast warmly, amidst the most enthusiastic peals of acclamation.

"'Who will then be the coward? (*renewed cheers.*) We will put them in the wrong; and if they attack us, then in your name I set them at defiance.'

"There is no misunderstanding this. '"He who commits a crime gives strength to the enemy"—you must take no premature step—you must wait, if possible, until the district of each repeal warden is "ready for liberty." But if the enemy does not permit me to organise the country from north to south, and from east to west; if they do not allow me to have these multitudinous meetings in every part of the country, until the organisation and discipline shall be complete; if they do not allow us to carry on our unconstitutional and illegal proceedings; if they attack us, we will put them in the wrong, and then, I set them at defiance.' "

In his anger at Lord Beaumont, who had spoken of him as a venomous reptile, the agitator was betrayed into the use of language calculated to madden an excitable population. "I ask you, mongrel, heartless Beaumont, do you want it to go through the people of Ireland, that you would support the English minister, if he had been mad enough to make war upon the Catholics of Ireland? Suppose some Irish Paddy had escaped from the slaughter, and going over

to London, had met some of his former neighbours, they would ask him the news; but what would be the tidings he would have to bring them? He would hear that you were one of the men who hallooed on the destroyers of the peace of his home. Oh! you would be very safe that evening—would you not, Lord Beaumont? The manufactories in your neighbourhood would be safe too; and proud London herself in which you would flatter yourself with the hope of being secure, would be also safe, when the account of the ruin of Ireland would arrive. No; one blaze of powerful fire would reach through her vast extent, and in the destruction of England would vindicate the country of the maddened and persecuted Irishman who would have reached her shores.'

In seeking to wheedle the troops, however, he would roar you as gently as a sucking dove. "In correcting the report of his speech he said, 'He did not call the soldiers of Britain a ruffian soldiery—he would not call them so, because it would be false. They were, on the contrary, an extremely civilised class of men, and he expressed more than once that he never now saw a soldier in the dock charged with any crime. He also spoke of the sergeants, whom he thought an exceedingly well-informed and well-conducted body of men, and to them the discipline of the entire army fell. If justice were done to them, there was not a company in which one of them ought not to be raised to the rank of an officer.'"

Mr. Steele, the true-hearted leader of a forlorn hope, spoke out frankly his meaning. "If Ireland and Ireland's leader were compelled to resistance, as he (Mr. Steele) had for so many years, above all others, laboured to keep the peace of Ireland, he would in that case find it a duty to his country and to his own character, to solicit from his august friend, O'Connell, that he would appoint him to the leadership of whatever enterprises were the most desperate."

O'Connell's enumeration of the strength he wielded at Kilkenny was most artful and demonstrative, suggesting awful threats, but using none. "What a waste of physical force have we not witnessed to-day? We stand at the head of a body of men that, if organised by military discipline, would

be quite abundant for the conquest of Europe. Oh, but it will be said, they were not disciplined. Do you not think they were as well able to walk in order after a band, as if they wore red coats, and that they would be as ready to obey their repeal wardens, as if they were called sergeants and captains?"

The attention of the jury was next directed to an article in the *Nation* to prove "The Morality of War." "It might more properly," said the Attorney-General, bitterly, "have been headed, 'The Morality of Rebellion.' 'His cause must be good to justify our unqualified praise of the soldier. If he fight to rob or oppress; if he fight in the ranks of an invader or a tyrant; if he fight against the cause of liberty, and against the land that gave him birth, may his banner be trampled, and his sword broke in a disastrous battle, and may his name rot in eternal infamy! But if he fight for truth, country, and freedom, may fortune smile on his arms, may victory charge by his side, may wealth, strength, and honour, wait on him and his, if he survive his conquest; and if he fall in achieving it, may glory sit upon his tomb, and may a grateful country cherish those he loved!'

"In his address at Mallow in June, O'Connell harangued with more haughty assurance of success. 'If they assailed us to-morrow, and that we conquered them, as conquer them we will one day, the first use of that victory which we would make, would be to place the sceptre in the hands of her who has ever showed us favour, and whose conduct has ever been full of sympathy and emotion for our sufferings.'

"The sceptre is to be placed in the hands of the sovereign of this country by those connected with and concerned in this conspiracy. The Association is first to wrest from her Majesty her power and authority, and then, at their own free will, they were to place the sceptre in her hands, and, as I may fairly add, place that sceptre in her Majesty's hands upon their own terms. These are the proceedings of the Loyal National Repeal Association. In another part he said—

"'Are we to be trampled under foot? Oh! they shall never trample me, at least; I was wrong; they may trample me under foot, but it will be my dead body they will trample

on—not the living man. Yes, Peel and Wellington may be second Cromwells; they may get his blunted truncheon, and they may, oh, sacred heaven! enact on the fair occupants of that gallery the murder of the Wexford ladies.'

"Was there ever such an attempt heard to create between the fellow-subjects of the same empire feelings of hatred and indignation? Is it to be tolerated, in a country where law is in force, that proceedings such as these are to be permitted?

"'All that is delightful, all that the enthusiasm of romance can fling round the human heart, is centered in my love for Ireland. She never has been a nation, for her own children had her split, and rent, and divided, when the Saxon first polluted her verdant soil with his accursed foot. I hope my dream of conflict will never be realised—that it is an empty vision; but let none of us be to blame—let us stand shoulder to shoulder on the constitution—and let not Ireland be abandoned to her foes, by the folly, the passions, or the treachery of her children.'

"Gentlemen, I shall now bring you to a most important meeting; important, because I believe it is the first meeting at which the assertion was made by Mr. O'Connell to the assembled people, of the possibility of having the union repealed without the aid of the united legislature. This he boldly and confidently laid down as the law; and I shall wait with anxious attention to hear whether, amongst his numerous counsel, he can get one man who will venture to re-affirm his proposition. I cannot say that the proposition will not be re-affirmed—but it will excite surprise in my mind, if in the face of the country, if in the face of the legal profession, if in the face of this high court, such a proposition be repeated, which I denounce as illegal, unconstitutional, and unsustainable.

"At Dundalk, after his expressing his hope of getting a substantial portion of the people of the North to join him, he announced his next step, to consider the plan for the New Irish Parliament. 'Every town having 9000 is entitled to representation, and that, with county members, will make up 300 members. And what is to prevent me asking these 300 gentlemen to a public banquet, which nobody else shall attend but themselves and me? I do not see why we should

not have our conciliation board — not sitting as deputies, but merely happening to have the confidence of localities. I have made my plan. I have examined well the act of parliament, and will drive 300 gentlemen through every clause of it.' I pray your attention to what follows: — 'There remains only the assent of the sovereign, and I tell you distinctly, it can at once be revived legally and constitutionally, by the mere exercise of the prerogative of the Crown; by the issuing of writs it can be revived without going to the British parliament at all. Let nobody dispute this with me that does not dispute the Queen's title to the throne.' These deluded people are told, that when this organisation is complete, when the country is ready for liberty, her Majesty may issue writs for the summoning of the Irish parliament, and they are told this by a gentleman standing eminent in his profession at the bar. He is now in this singular position: either he did not believe the law to be as he stated it to the assembled thousands — and then I would ask what justification can there be for his statement? — or he did believe it, and if so, will any of his counsel venture to assert it now at this bar?"

The draught was bitter as wormwood; but the stern Attorney-General again held the cup to O'Connell. "Unless the act of union be void, this right does not exist in the Crown; and I ask again, is there a gentleman amongst the numerous counsel on the other side who will state that the act of union is void?"

Goaded into speech, O'Connell exclaimed, "Yes, there is;" and Mr. Smith continued, "Unless they go that length, it is utterly impossible to say that the prerogative is vested in the Crown of issuing writs to summon an Irish parliament. I am aware it has been stated by one of the defendants, on different occasions, that the act of union is void; but unless counsel assert that this act of parliament is absolutely and legally null and void, I reiterate the assertion that no lawyer can now say that the prerogative is vested in the Crown to summon an Irish parliament. It is a wicked delusion practised on the people of this country, to tell them that the repeal of the union can be obtained without the sanction of parliament."

The leader of the movement having cited Saurin, Bushe, and Plunket in support of his proposition, "each and every one of the three says that the Irish parliament had no right to pass the Union Statute — that it was elected to make laws and not to unmake legislatures, and that the act of union, under the Irish constitution, did not annihilate the parliament;" the Attorney-General exposed the fallacy. "Observations made by them in the course of debate have been cited, for the purpose of instilling into the minds of the misguided people who heard Mr. O'Connell, that these eminent persons had, after the act of union had passed, declared its invalidity, and, having declared its invalidity, had thereby pronounced that the authority of the Crown existed to call together an Irish parliament." The Attorney-General closed his address on the 16th January with reciting some beautiful lines, with which O'Connell had adorned his speech at Tuam:

> "Oh! Ireland, Ireland, shall it be my lot
> To raise my victor head, and see
> Thy hills, thy dales, thy people free?
> That glance of bliss is all I crave
> Between my labours and my grave."

He renewed his very effective statement the next morning with reading an article from the *Nation* of the 12th August, marked by much beauty and power of diction. It is headed, 'The March of Nationality.'

"'How beautiful our country is! How full of cautious energy! How sure a hope lies under her anxiety? How fiercely she springs upon what it is right to strike! How temperately she avoids all needless by-battles! And 'tis beautiful — lovely, with that piercing beauty that pains the heart which worships — to see her calming down, and soothing, and repressing her hungry and bruised children, while she prepares for them retribution and relief. Her brow is pale — most pale: and well that careful mien becomes her. Oh! 'tis well to see her preparing for the strife without rude boasting or hot noise. It becomes the heiress of suffering centuries. There is nothing recorded in history like this display. The numbers of these meetings were unequalled in any population. The time, and labour, and loss

suffered by the people in their long marches to them — were never before voluntarily borne, save in the excitement of war. But the order observed in coming and going — the organisation necessary to produce such order — the serious good temper — the absence of riot or vice — made each of these meetings a strange and formidable event.'

"Gentlemen, this is not my language — it is the language of one of the accused parties — 'the absence of riot or vice made each of these meetings a strange and formidable event.' Gentlemen, it is true that Mr. O'Connell enjoined peace; every person must rejoice that his injunctions were obeyed, and that we have been up to this time saved the misery which would arise from tumult or outbreak, or an attempt to carry out, by physical force, the designs of the defendants; but the absence of riot, the absence of actual violence at these meetings, does not take away from their illegality, because the intention was to organise the country, and that the meetings should be peaceable until the organisation was complete. 'Ireland is changing into a nation. She is obtaining all the machinery of one — public opinion, order, taxation, justice, legislation. What will be wanting when the work is done, but to call her what she then will be — a nation? When Grattan walked into the Commons in his volunteer uniform, and proposed liberty, he had less power at his back than O'Connell will then have, or indeed has now.'

"At Tara, in August, 200,000 met. It was selected as the place where the monarchs of Ireland had been elected; and secondly, it was the scene of a battle in the rebellion of 1798, where those who were engaged in the rebellion were defeated. Hundreds of the persons assembled at Tara were seen upon their knees, plucking a wild plant — a geranium, with a red leaf — under the impression that the colour of the leaf arose from the circumstance of the slaughter which took place there in the rebellion. A people thus excited were fed by these stimulants. 'Yes, the overwhelming majesty of your multitude will be taken to England, and will have its effect there. The Duke of Wellington began by threatening us. He talked of civil war, but he does not say a single word about that now. He is now getting eyelet holes made in the old

barracks. Ireland, roused as she is at the present moment, would, if they made war upon us, furnish women enough to beat the entire of the Queen's forces. Oh! English honour will never again betray our land, for the man would deserve to be betrayed who would confide again in England. I would as soon confide in the cousin-german of a certain personage having two horns and a hoof.'

"'Give me three millions of repealers and I will soon have them. The next step is being taken, and I announce to you from this spot, that all the magistrates that have been deprived of the commission of the peace, shall be appointed by the Association to settle all the disputes and differences in their neighbourhood. Keep out of the petty sessions' courts, and go not to them. We shall shortly have the preservative society, to arrange the means of procuring from her Majesty the exercise of her prerogative; and I believe I am able to announce to you, that twelve months cannot possibly elapse without having an hurra for our parliament in College-green.'

"The great meeting at Clontarf was announced for the 8th October, when the chair would be taken on the mound raised to cover the bodies of the Danes who fell in battle there. Every means that could suggest themselves to the minds of the persons engaged in the conspiracy, were adopted for the purpose of creating discontent and disaffection in the minds of the people of this country, who were excited to feelings of anger against those who were called 'their Saxon oppressors;' the people were taught their own strength — they were brought together from great distances in thousands, and made to know the reliance they might place upon themselves; their discipline was carried on to a certain extent; but still there was one great difficulty in the way of the accomplishment of the designs of those engaged in this conspiracy, and that was, that if the army was to be depended upon, there would be no possibility of successfully carrying carrying out their designs.

"Meantime, on proroguing Parliament, the Queen denounced, in the strongest language she could use, the pernicious agitation in Ireland, which excited feelings of mutual

distrust and animosity between different classes of her people, and O'Connell at Loughrea thus *loyally* alluded to her speech. 'They' (that is the ministers) 'had but one arrow in the quiver—but one stone unflung—but one trick untried, and out they brought the Queen. All Europe was to be astonished by the splendour of her speech against Ireland —oh! what a trick it was! It was worse than a scolding match between two fishermen in Billingsgate. The fisherwoman gives her colleague the power of reply; and if she calls her by ugly names, she is obliged to wait to hear them retorted; but the government had all the scolding on one side. It was an unfair advantage that Judy took of us. Let England be involved in any awkward predicament with one state of Europe—let any country on the face of the earth attack her, and in twenty-four hours we shall have our own parliament. I will proceed cautiously and discreetly, with full knowledge, and with an eye to the breakers a-head, knowing well the shoal water, and steering the bark of Irish liberty through every danger, till it reaches in safety the port of repeal.'"

On another part of his mischievous harangue which deplored the absence of commerce, the Attorney-General made a just and indignant commentary. "'You have no commerce, and where are your manufactures? Oh! you have no manufactures. Why? Because Ireland is governed by Saxons, and not by Irishmen. Will you join me in giving Ireland to the Irish?' He did not tell the misguided people whom he addressed, that if commerce and manufactures did not flourish in this country as they did in England, it was in consequence of that pernicious and destructive system of agitation which has been the curse of this country for years. He did not tell them it was that agitation that kept English capital out of the country; he did not tell them it was the insecurity of property, aye, of life, which prevented the English capital, the Saxon capital, from flowing into Ireland; he did not tell them, that if we had not commerce, if we had not manufactures to the same extent as the sister country, there were no persons whom the Irish people had to thank for it, but those engaged in this conspiracy, and their associates."

The language of the arch-plotter became more confident

and menacing, as Government made no sign of opposition to the mustering of his forces. At Clifton and Lismore he thus clearly proclaimed the tactics of the conspirators: — "For the present year my monster meetings are nearly over; there will not be above seven or eight more of them; but before I have done with them the demonstration of moral combination, and of the mighty giant power of the people of Ireland, will be complete — their discipline will be complete. If you were wanted by me to-morrow, would you not come? Let as many as would come at my call, hold up their hands." Here, it is stated in the paper of some of the defendants, "a dense forest of uplifted hands waved to and fro amid the most tremendous cheering we ever witnessed; the scene was actually indescribable." Mr. O'Connell further said — "He could tell them, that the English were beginning to see and understand the Irish, and by and by they might attempt to bribe them. They might talk of compromise! Compromise to the winds. He would have no compromise. He had floated his standard, and he would stand by it, through weal and woe, and on that standard was engraven, Repeal. He was persuaded he had no other way of working out his salvation than by working out good for his fellow man. It was his vocation under heaven. My first anxiety is to wrest from the judicial administration its unholy authority; to do away with the wrangling of the petty sessions' courts, where the magistrates preside. I want to have tribunals of reconciliation in every parish in Ireland, existing not by patent from the Crown, or imbued with Saxon notions of justice, but fair, equitable, and impartial tribunals, where the people may fairly settle their differences by impartial arbitration."

"At the Rath of Mullaghmast there mustered a million according to the highest calculation, 250,000 according to the lowest. 'I chose the place,' said O'Connell, 'for an obvious reason. We are upon the precise spot in which English treachery — aye, and false Irish treachery too, consummated a massacre unequalled in the history of the crimes of the world, until the massacre of the Mamelukes by Mehemet Ali.'

"I suppose it will be said that those who selected that spot

had not combined to excite feelings of hostility between different classes of her Majesty's subjects. But why was this spot selected? What was the meaning of such allusions addressed to an excitable people, if not to inflame the minds of those who, if let alone, and not misled, and misguided, and misinformed on every subject, would be obedient to the laws. By selecting this spot the forgotten provocations of centuries past have been raked up; the sufferings of our ancestors brought into view, and all for the wicked purpose of endeavouring at the present time to excite hostility between the fellow subjects of the British crown. It may appear an unimportant circumstance, but I think you will find it was not so, that he came there arrayed in scarlet velvet robes. There are many matters of a very trifling nature when stated, which, however slight the effect they would have on the higher orders, are calculated to have a deep impression on the ignorant people assembled in such multitudes. Mr. O'Connell was arrayed, Gentlemen, in scarlet robes; and an incident occurred on the platform, which also might strike some as unimportant, but had a most powerful effect upon the congregated multitudes of that day. A cap — which, according to the statement of the defendants in their papers, was embroidered and ornamented with gold, after the fashion of an ancient Irish crown, (so at least said Mr. Barrett,) which is preserved in the College Museum — was presented to Mr. O'Connell, and after an address read to him, was, with an appearance of ceremony, placed upon his head. I suppose it will be attempted to attach some ridicule to this, but no idea of that kind was entertained by the people on that day, nor was such the effect intended to be produced, whatever colouring may now be given to the act — the object was to create a lively impression on the hundreds of thousands collected there; and with that view that ornament was placed on the head of Mr. O'Connell, 'the monarch of their affections,' amidst the cheering of the multitudes. I am satisfied it made a deep impression on the minds of the uneducated people surrounding the platform in hundreds of thousands. And remember, that although what was said on the platform could not be heard by the crowd,

all that was done there could be seen by every human being present on that occasion.

"He spoke in the triumphant tone of a conqueror, but proved a false prophet. 'I have the game in my hands I have the triumph secure — I have the repeal certain, if you obey my advice. I will go slow; you must allow me to do it; but I will go sure. No man shall be fined — no man shall be imprisoned — no man shall be prosecuted who takes my advice. (Hear, hear.) I have led you thus far in safety — I have swelled the multitude of repealers, till they are so far identified with the entire population of the soil, or nearly so. I have seven-eighths of the population of Ireland enrolling themselves as associates. (Cries of 'More power to you.') I do not want more power. I have power enough. All I ask of you is to allow me to use it. I will go on quietly and slowly. I am arranging the plan of a new Irish House of Commons. It is a theory, but it is a theory that may be realised in three weeks.'

"He then put a question of the lively response to which there could be no doubt, whether they had yet confidence in their leaders, and added, when the multitude huzzahed consent, 'How my heart thanks you for that shout! It is a reply to my apprehensions — yet knowing her grievances, knowing the burning ardour of her sons, knowing their gallantry and fearless bravery, knowing how little they value the risk of life, and the certainty of death, if the liberty of Ireland were to be the prize for which they were to make that sacrifice, I did apprehend — it came over me occasionally, it was like the incubus of a sickly dream, and disordered every faculty of my mind.' That was, the apprehension that the people would be impatient. 'I was afraid that somewhere there would have been an outburst to gratify the enemy. I will awake,' he said, 'thinking of the next step in the progress of her freedom, and those steps are not difficult. I want to show the nations of Europe that we are capable of administering our judicial business ourselves; that we do not want the Saxon and the stranger; and above all, we do not want bigoted men to serve us or to do our business.' Then in another part of the address he says — 'It

is not by accident that to-night we are on the Rath of Mullaghmast; it was deliberate design, and yet it is curious what a spot we are assembled on. In this very spot they fell beneath the swords of the Saxon, who used them securely and delightfully in grinding their victims to death. Here the Saxon triumphed; here he raised a shout of victory over his unarmed prey; upon this very spot four hundred able men perished, who confiding in Saxon promises came to a conference of the Queen's subjects, and in the merriment of the banquet they were slaughtered. There never returned home but one; their wives were widowed, their children were orphans — in their homesteads the shriek of despair — the father and the husband steeped in their own blood. Their wives and mothers wept over them in vain. Oh! Saxon cruelty! Oh! England, England! thy crimes have filled the cup of bitterness, and the hour of the vengeance of God, I much fear, cannot be far from you. At all events, suffering Ireland, you will have your days of glory, you have suffered much, and you have committed no infliction in return. I defy Saxon ingenuity and falsehood to show me any treaty the Irish violated; to show me any one compact they ever broke; to show me any one faith they plighted, they did not redeem.' This was a transaction that took place, or was alleged to have taken place in the reign of Queen Mary; and was recalled to the memory of the people for the purpose of exciting hostility between the Irish and the English subjects of our Queen. After the lapse of centuries, history is ransacked for the purpose of finding something likely to excite hatred and animosity — forgotten, or falsified atrocities are depicted in glowing colours, and the descendants of the opposing parties of former times are newly arrayed against each other. And yet you will be told, when the case comes to be stated for the defendants, that they, forsooth, are innocent of the charge of conspiring to excite hostility between her Majesty's subjects in the two countries.

"Sanguine of approaching triumph, the meeting at Clontarf was proclaimed in such grand military style that O'Connell saw at a glance the imprudence, and said artfully, it was a very good quiz, but it ought not to have been printed. A new

advertisement was published, not altogether disclaiming and omitting this quiz, as it is called, which rather indiscreetly was printed; but some one took up a pen and turned the word 'troops' into 'groups,' struck out the word 'cavalry,' the words 'officer,' 'muster,' 'march,' and 'parade,' and left the advertisement word for word as it was before, except in the particulars I have mentioned; and this document, this quiz, was just as well understood when the amended and disguised advertisement was published, as if it had remained in its original form."

The *Pilot* newspaper proclaimed the physical vigour of their champion. "Some say our leader is too old for the camp or the field. It is false. He is of Herculean frame, buoyant in spirit, and youthful in constitution. His age is only sixty-eight years. That of Brian Boroihme, when, on Good Friday, in 1014, he fought and conquered the Danes at Clontarf, was eighty-eight years."

But the end of all this braggart boasting was at hand. Government prevented the dangerous meeting near Dublin, the conveners of it succumbed, their arrest was ordered, the prosecution for a high misdemeanour directed, and instant tranquillity ensued. "I believe," said the Attorney-General, at the close of his able summary, "it was the object of Mr. O'Connell, that the parties at those meetings should separate peaceably — that appears, up to a late period, I believe, in most of his addresses at those meetings — he certainly so stated to those assembled — but I also am satisfied of this, that there was an ultimate object thought of, when the organisation should be complete, and when every repeal warden in Ireland had brought each parish into that state of discipline, that it was 'ready for liberty,' as Mr. Duffy says, and had reported it to be so; and then I believe it was intended, to use the language of Mr. Barrett, that Ireland should 'stamp her foot, and repeal must be granted.' Whether it was the intention of the defendants by those inflammatory speeches and inflammatory publications to lead to actual outbreak hereafter or not, is not material for the purpose of the present charge against the defendants. If they actually had in contemplation the full extent of intending, at some period hereafter, that there should be an outbreak, headed by any of the

defendants, I have to tell you, that in point of law, that would be a higher offence even than that which the defendants are now indicted for. It is sufficient for the purpose of the present indictment, which is only for a misdemeanour, subjecting the defendants to fine and imprisonment, and to no further punishment — it is sufficient for the purpose of this case, that you should believe that those meetings were held for the purpose of overawing the legislature, and by the demonstration of physical force, and the organisation throughout the entire country, to get the repeal of the union otherwise than by means of the constitutional tribunals of the country, and the houses of parliament of the united empire. If their intention was to overawe the legislature, and to obtain the repeal of the union, by the intimidation to be created by this organisation, I need scarcely inform you that it is illegal; for it would be utterly impossible to carry on the government of the country, if each particular alteration that is to be made in the law of the land, is to be made, not by the representatives of the people, but by the people themselves, by the use or by the show of physical force. But, Gentlemen, one mischief arising from these multitudes is this, even although Mr. O'Connell is anxious that there should be no outbreak — even although such be his anxious desire — he may not be able to control those lately under his command, after he has excited them to the extent to which they have been excited in this country. In his speech at Mullaghmast, he alludes to an apprehension of that kind passing over his own mind; it came across him, he says, as a sickly dream; he was apprehensive, and appealed to the assembly whether they would continue to obey him. This I will certainly admit — I do not believe it was intended that these meetings should, any of them, end in outbreak; I believe it was intended that they should disperse peaceably and quietly; I believe that was part of the very system of this conspiracy. Of course we have all reason to rejoice, as I have already said, that such was the plan adopted, that we have not incurred the misery which would have arisen from an opposite policy; but that does not take away from the illegality of these proceedings, if the intention were, to organise the people to that

extent that the government of the country should not be carried on independently, but only under the pressure and control of assembled multitudes, combined multitudes, whose leaders should dictate to the legislature the course it must pursue. Mr. O'Connell may not have foreseen the length to which he went at Mullaghmast, when that 'sickly dream' came over him; he appears at that time to have been afraid that the people of Ireland had been wound up to so great an extent that an outbreak might take place; but whether he intended it or not, whether he intended that each particular meeting should end peaceably, and that at no later period should there be any recourse to actual physical force, or to any thing beyond a demonstration of it, I again tell you confidently, subject to the Court correcting me on the subject, that those meetings, and the combination and conspiracy to procure them, are equally illegal, on the present indictment for conspiring to procure alterations in the law otherwise than by constitutional means."

The Attorney-General closed his address with a quotation from an eloquent speech of Chief Justice Bushe, on the right performance of their duties, and sat down, having spoken for eleven hours and a half.

The proofs of conspiracy, which had been thus clearly grouped by the Attorney-General, the speeches, writings, and acts at the monster meetings, as detailed by reporters, short-hand writers, and policemen, occupied the Court for eight days. Both the variances and additions appear to have been comparatively unimportant. The oral evidence left little doubt of a common concert to produce terror in the minds of the English, and fierce burning hatred to the Saxon in the Irish, a deliberate attempt to wring a repeal of the union from ministers by fear. The proof of attempting to tamper with the allegiance of the military appears to have been restricted to the martial letter of the Rev. Mr. Power and two or three speeches of O'Connell. He let

"I dare not wait upon I would;"

and whatever hints and wishes to wheedle the Irish troops from their duty might have been whispered, there was no

sufficient evidence upon that branch of the charge, on which to found a verdict of guilty. Not so the design to divert judicial business from the Courts of Law into domestic forums, over which magistrates chosen by the Association should alone preside, those justices whom the Chancellor had dismissed being selected in preference, to mark their contempt for the existing administration. There was no necessity to prove the adoption of any measure in furtherance of the common illegal object. If the defendants conspired to effect a change in the administration of the laws without effecting it, their crime in law was complete. But the evidence adduced to show the actual sitting of these new-fangled courts was almost laughable for its tenuity. The following is the fragment of evidence adduced to prove the real *bonâ fide* setting up of Arbitration Courts.

Charles Hovendon sworn, and examined by Mr. Brewster. "I am an inspector of police. I know Dr. Gray and Mr. John O'Connell. I saw them both acting as arbitrators. I saw Dr. Gray act but once as arbitrator. I have seen Mr. John O'Connell several times. I first saw him on the 17th of October. I saw him several days subsequently acting as arbitrator. There was one case the first day I attended the courts, and there was no case on the subsequent days."

Cross-examined by Mr. Hatchell. "I was not there on the commencement of the proceedings of the first day. I went there about a quarter past eleven. I went in and out once or twice; no obstruction was given to me, quite the reverse. There was the greatest kindness shown me. They stated they had no power to do any thing except by consent of the parties. I saw no fees paid, no persons pleading. The parties wishing to have their differences settled did consent. There was nothing done in the case that was brought on; it was adjourned to Kingstown. I was not present when it was finally decided. I did not see any case decided. I went there in uniform. I did not go there by the direction of the arbitrators. I went there in performance of my duty as inspector of police. I did not go there as officer of the court. I gave no previous intimation that I would go there. I saw no oaths administered."

"Such," says a clever pamphlet, "is the very prosperous account which the witness gives of the success with which the arbitration system upon the voluntary and popular principle was attended in the immediate vicinity of the city of Dublin. Such were the practical results, the first fruits of the awful combination, which was fearfully described upon the monster indictment, as a conspiracy 'to bring into hatred and disrepute the courts by law established for the administration of justice in Ireland, and to diminish the confidence of Her Majesty's subjects in Ireland in the administration of laws therein, with intent to induce the said subjects to withdraw the adjudication of their differences with, and claims upon, each other from the cognizance of the said courts, and to submit them to a decision of other tribunals, to be constituted and contrived for that purpose.' Several sittings — no fees — one case — no decision; not even a fragment of a hearing, their arbitratorships having adjourned the judgment, and entered a *curia advisare vult*, not wishing very probably to part with their only cause, until they had some chance of bagging another."*

The Irish bar since the days of Curran have plumed themselves on their power of cross-examination, of wit and humour, and some excellent specimens are afforded in the course of this protracted trial of their failure and success in both branches of the art. A few extracts from these attempts will interest and amuse, if they do not greatly inform or instruct, the reader. Mr. Bond Hughes, having reported the mock coronation of O'Connell at Mullaghmast, was thus cross-examined by Mr. Hatchell: —

"Did you handle the cap at all? — I did not, but I admired it.

Would it not be an excellent travelling cap to go about with in the pocket? — It would.

Do you not know that gentlemen who visit Paris often come back with the tricoloured Republican cap as a comfortable cap to sleep in? — I know they bring caps home with them sometimes.

* A Review of the State Prosecution, by Mr. Leahy.

Now you, as a man of the world, did not think there was any treason in that cap? — I formed no opinion.

Not whether this is a cap to fit the crown or you have a crown to fit the cap? — Either way you like it.

Were you patriotic enough to buy any thing to further Irish manufactures? — I did.

I suppose you bought a tabinet for your lady? — I did.

It was a great advantage then that you were brought so far for the encouragement of Irish manufactures, and if you had been disengaged you would have had no objection to have got a lady for the tabinet? — Probably not.

Indeed you might be worse off."

Mr. Charles Ross, another reporter, having stated that he received 350*l.* for coming over, was thus bantered in cross-examination by Mr. Henn: —

"Were you much frightened at the idea of coming over? — Yes, I was frightened a little.

I suppose you found the alarm false? — Why, yes.

When you came here in July, were you not connected with the *Morning Chronicle*? — Yes; I wish to state the reasons why I came.

Mr. Henn. You have already given 350 substantial ones for coming. [*Laughter.*]

Witness. If I had not come as a newspaper reporter, I would not have come for any thing.

Would you not come forward for 100,000*l.*? — Oh! I might. [*Laughter.*]

Or 75,000*l.*? — I don't know.

Mr. Henn. Would you come for 50,000*l.*? — No, I would not.

Mr. Henn. Then this is your evidence: — you might come for 100,000*l.*; you don't know whether or not you would come for 75,000*l.*? but you would not come for 50,000*l.*?

Witness. I mean that I would not be induced to come unless by something very large.

You took what you call topical notes of what took place? — Yes.

Tell me what you mean by topical notes? — I mean the heads of the topics on which the speaker dwelt.

And is that what you call reporting? But you do not pretend to say that you even gave the substance of what was said in those special or topical notes? — I do not understand the latter part of your question. I took notes in such a way as not to misrepresent the sense of the speaker upon those points upon which he spoke: but I do not pretend to have given the words, or any thing like them.

Do you pretend to say you have given even the substance of the observations made on the various topics? — I do not know, for the expression 'substance' extends.

Mr. Henn. Why substance is substance, and it is so plain a word that it could not be made plainer [*laughter*]. Did you give the substance? — I gave the substance or meaning of the observations.

Of all the observations? — Oh, no.

What then? — The discussion of these topics might have occupied twenty sentences; but those twenty sentences might contain but one idea, and I only put down the idea [*laughter*].

What are topical notes; let us be precise? — The substance of the observations made on the various topics alluded to.

Now, Mr. Ross, having escaped from the savages [*loud laughter*] and got back to London, you got courage to come back again? — I did not come back again."

So far the counsel had rather the better of the conflict, but in the next round he was decidedly undermost.

"Don't you think it very wrong that a reporter should be called upon to give evidence? — No, certainly not. I think a reporter should obey the law of a country, and I never heard that questioned until I heard it by some gentlemen here. 'Tis preposterous [*laughter*].

You were not always merely a reporter? — No.

You were, I believe, an editor? — I was.

Were you the editor of a newspaper called the *Carlisle Patriot?* — I was.

About what time? — In the years 1837, 1838, and 1839.

What were the politics of that paper? — Conservative.

Are those your own politics? — They are.

Were they always so? — Not always.

For the last ten years? — The title has not existed for ten years.

But the principles might? — True enough.

What were you before you became a Conservative? — Why, if I might define it ——

I only ask you to name it? — Why, I might answer that —

> 'In moderation placing all my glory,
> Tory would call me Whig, and Whig would call me Tory!'

I have been complained of (said the witness) by some of my own family, who are strong Liberals, for being a rank Tory; and I have been condemned by some of my Tory friends for being too much of a Liberal.

And, perhaps, both were right? — Perhaps so; I can only arrive at a mean by the assertion of opposites [*loud laughter*]."

Another striking instance of the use and abuse of cross-examination was afforded by Mr. Fitzgibbon when racking with questions a third reporter, an Irishman, Mr. John Jackson.

"May I take the liberty of asking you, sir, what countryman you are? — I am a Clare man.

How long have you been a reporter? — I have been for two years in the capacity of Irish correspondent to the *Morning Herald.*

I did not ask you, Mr. Jackson, how long you had been a correspondent. That was not my question; what I asked you was how long you had been a reporter? — I can't say I am a reporter, that is to say, I am not a short-hand writer.

I did not ask you were you a short-hand writer: I asked you how long you had been a reporter; do you mean to say you are not, and never were a reporter? — I am not a reporter, and never was in that sense of the word.

In what sense of the word? — I mean in the sense of a short-hand writer, for the term 'reporter' is usually applied to a short-hand writer.

Then, by a 'reporter' you mean a short-hand writer, or stenographer? — Yes, I do.

Were you ever in the habit of reporting proceedings of meetings or courts for the purpose of such reports being published in the newspapers? — Yes, after a manner [*laughter*].

To what provincial papers used you to send your reports? — Principally to the *Limerick Star* and the *Limerick Chronicle.*

Did you send reports to both of these journals at the same time? — No, I did not; I used to send reports from my own place, and not from Limerick.

And of all this side creation, Mr. Jackson, pray what place belongs to *you?* [*laughter*] — Kilrush.

That is your place? — Yes, it is my native place; my contributions had no reference to politics.

I did not ask you any thing about politics, sir; your reports had reference to public proceedings, had they not — had they not reference to matters of public interest? — They were principally sketches of the petty sessions of Kilrush.

Illustrated sketches? — A little embellished occasionally [*laughter*].

By being 'a little embellished' do you mean to convey that there were pictures in them for the purpose of embellishment? — No; they were pen and ink embellishments [*laughter*].

Then, I suppose, that by embellishments you mean something in the report which, in point of fact, did not occur? — Decidedly.

Something in fact that was not true? — Yes.

I may go the length of saying, I suppose, that half of them were fictions? — There were many fictions in my sketches.

And that, I suppose, is what you call reporting after a manner [*laughter*]. — Yes, precisely so [*laughter*].

Then you commenced your career as a reporter by vending falsehoods? [*laughter*] — No, not exactly that; I wrote on the same principle and in the same style as a reporter to a magazine.

Have you contributed to magazines? — I have done so a little.

And your magazine articles are embellished after the same fashion? — My magazine articles were tales of imagination [*laughter*].

Are you a bit of a poet? — Indeed a very large *bit* of a poet. [*The witness was remarkably tall.*]

Are you what is called in the county Clare a *poetasther?* [*laughter*] — You may, if you like, apply that appellation to me, for I do not mean to say I am a poet."

According to the reports there was every possible encouragement given to the counsel to proceed, for, like the simple audience in the Vicar of Wakefield, if there was not much wit, they laughed consumedly. The merriment and good humour did not last, however, for the imaginative reporter could scarcely tell, whether some of his notes were not copied from a morning paper, or a note-taker's slips. Upon this confession Mr. Fitzgerald thrust home.

"Will you swear that Mr. O'Connell was at the meeting at two o'clock? — He came in whilst I was there, according to my note.

Do you mean according to your note *verbatim*, or do you swear from your memory? — I either saw him enter while I was there, or he was there before me.

Is that your answer, Mr. Reporter from Clare, with your face hardened by the Atlantic breeze? — I am not ashamed of the place I came from;—the breeze has not hardened my face.

Well, sir, with your face hardened by the Atlantic breeze——

Mr. Brewster. It is not material, but he did not say so.

Mr. Fitzgibbon. He has sworn it.

Mr. Brewster. What he said was it had not.

Mr. Fitzgibbon. Do you swear that the Atlantic breeze or something else has not hardened your face? — I told you it had not; and I'll prove before I leave the table, if allowed to explain, that nothing has hardened me."

The witness thus roughly handled was next punished by Mr. Whiteside: —

"Now, Mr. Jackson, draw upon your memory and not upon your imagination for your facts. Was Mr. Duffy at the Association on the 6th of July? — I cannot say without referring to my notes.

You have a taste for eloquence? — Not the slightest [*laughter*].

Don't you deal in 'thunderbolts' and 'tarnation fine things?' — It is my own thunder [*laughter*].

Oh! yes, you contribute to the magazines, that is obvious? — Not to the powder magazines [*great laughter*].

These things suit the London market? — They go down with the Londoners; they are very gullible [*laughter*].

I understand. They were meant to meet the taste of the English readers of the *Morning Herald*, and you will not undertake for their accuracy? — I will not.

I suppose in sending your sketches to the *Herald* you seasoned them [*laughter*] according to the palate — the literary palate of the readers of that journal? — I may have thrown in a little fun to make them amusing [*laughter*].

Oh! I understand. You made them spicy [*great laughter*] to make them go down? — Yes."

Another unlucky short-hand writer, Mr. John Ulick M'Namara, had mistaken a reference which O'Connell made to Professor Forbes as a witness to the fact of the Irish excelling in muscular power, and had dotted down Spaniard for Scotsman. He was directed to read his note a second time: "Because a distinguished professor of *Spain* said there is not such a people as the Irish on the face of the earth."

"Now, on your oath, either from your notes or memory, can you swear that any thing was said about a professor of Spain? Are you ready to swear that it was not a Scotch professor who was mentioned? — I swear that I took it down as a professor of Spain.

But you don't mean to swear that you are infallible? — No; nor will I swear that I might not have mistaken the word in taking it down.

Are not the words very much like each other in short-hand? — Not in the system I write.

Not in your system of making mistakes, perhaps. Now, write both words in short-hand.

Judge Crampton. Write them so as the jury may understand them [*laughter*]."

Witness then wrote the two words and some more, and handed them to Mr. Hatchell, who, having looked at them, said — "Certainly there is no great similitude between them; yours is the shortest 'philosopher,' and the longest 'professor,' I ever saw in short-hand."

The policemen, in their office of reporters, fared no better than the short-hand writers. Sub-Inspector Stewart, having repeated a speech of O'Connell's, was thus glanced at obliquely in the style of Lady Sneerwell by Mr. Henn: —

"Were you desired to report favourable or unfavourable? — I was not.

Did you hear him make any reference to Ribbonism? — Just at that time I quite lost the thread of his discourse.

Mr. Henn. I thought so; just the time when a policeman would be likely to lose the thread of his discourse. Recollect yourself. — I heard something about advising the people against joining ribbon societies.

Did you see these mottoes — 'Patience and perseverance?' — I did not observe.

Did you see added — 'Obedience to the laws?' — No.

Why, your vision appears as oblivious as your memory."

The Attorney-General interposed, and objected to Mr. Henn making these remarks.

Mr. Henn. "Is your vision as perfect as your memory? — Both are very good.

Did you observe the motto — 'Repeal, and no separation?' — I did not take notice of it.

Was there not a great number of ladies and gentlemen in the town on that day? — There was a great number of women in the town at the meeting.

Do you recollect a motto — 'The Queen, God bless her?' — I did not take any minor mottoes.

I see — only the principal ones."

The cross-examination of constable Jolly by Mr. Whiteside did credit to the name.

"Are you a constabulary man? — I am.

You have fought no battles? — No.

Oh! then you are not a military, you are a civil man. Now you have said the procession marched in military order, with bands playing, colours flying — are these words your own? Are they your own spontaneous effusion? — Yes.

Were you not frightened by this military array, close columns and marching order? — No.

What tunes did the bands play — did they play 'Paddy Carey' or 'Paddy from Cork,' or 'God save the Queen?'— I took no notice.

Now, what became of the guns and muskets, the cannon, the dead and wounded of this battle? — There were none at all. The horsemen were mounted five or six abreast, and more after them.

I see. You are sure the horses' tails were not tied together. Were there real living men on them? — There were, and women behind the men.

Yes, on pillions. Now tell us, did they charge you or you charge them? — I did neither.

Had the women their arms about the men? — They were holding on.

Now, I have to ask a question suggested by Mr. Hatchell. Do you conceive that an offence against the arms' act [*great laughter*].

So, with music playing and banners flying, and women with arms round the men, they marched out of Mallow? —Yes.

Were there no children there? — It would not be a place for them in the crowd.

Were the bands temperance bands or *tim*perance? — I do not understand *tim*perance.

I beg your pardon. I assure you I mean no impeachment on your moral character. I wish to know do you think it better that the people should amuse themselves playing music or drinking whiskey? — Indeed, sir, I prefer the former.

Mr. O'Connell said the sergeants in France got promotion — you cocked your ears at that? Now, do you not expect to be promoted to the office of head-constable when the trial is over. I hope you may, for I have a great respect for the constabulary, and like them in any character save witnesses? — That is for the inspector-general [*laughter*].

Well, the inspector-general is a reasonable man, and don't you think it reasonable that a useful active man like you should be promoted? — It is reasonable [*laughter*].

So Mr. O'Connell said when we got it (repeal) the labourers will be farmers, the farmers gentlemen, and the gentlemen all lords? — There will be no commoners then [*laughter*].

You will be a lord yourself [*laughter*]. Lord Ballincollig? [*great laughter, in which the whole Court save the Attorney-General joined.*] — He said so.

Tell me now which is all this, treason, conspiracy, sedition, or flat burglary [*continued laughter*]. — I never joke when I am on my oath.

You have idle times in the north, I think? — It is very singular, the less I have to do the better I like it [*laughter*].

Now did you not say you never joked when on your oath? — That is really no joke, sir [*loud laughter*].

You were not much pressed on that day? — Indeed I was by the crowd [*continued laughter*].

Why you are joking again; but there was nothing more to incommode you — your whiskers were not pulled? — The crowd was very great.

When did they ferret you out as a witness? — About the month of December.

Are there any respectable people in Mallow — any proprietors in the town — shopkeepers or landholders near it? — Plenty.

Why, then, have they pitched on you — a policeman who escaped to tell of your imminent hair-breadth escape from the scene of slaughter? [*laughter*] — I was sent here.

Now, sir [*here counsel addressed the witness in a tone of the most dramatic gravity, amid the roars of the whole Court*], sincerely trusting you may speedily obtain that promotion which you so richly deserve, I have the honour to wish you a very good morning."

When Mr. Hatchell attempted to quiz Captain Despard in the same style, his friends might have said "Cease your funning," for it proved a decided failure. The beginning is a plagiarised joke from Mr. Brougham, who stopped Serjeant Atcherley one morning with a solemn question prefaced by his own favourite form. "Now pray tell me, not that I care one farthing which way you answer it, — How are you?"

"Well now, I will ask you one particular question, and I don't care how you answer it. Are you a repealer? [*great laughter*].—And I will answer you as seriously, sir; I am not."

Captain Despard had stated, in his examination in chief, that he had asked a man from the barony of Shilmalier, "Did many come with you?"—He said, "Yes, 2,000 from Wexford, and we were joined by 3,000 from Kildare;' when Mr. O'Connell's carriage had passed, he said to witness: 'You did not take off your hat to Mr. O'Connell;' witness replied, 'Certainly not;' he said, 'You don't belong to our party;' witness replied, 'I do not belong to any party here:' he then said, 'I knew by the curl of your lip you did not belong to us.'"

Upon this Mr. Hatchell inquired, "Was the Shilmalier man humbugging you now?—If he was he met with the wrong man.

Were you surprised when he told you about the 2,000 men from Shilmalier?—Indeed I was.

How far is Shilmalier from Tara?—About forty miles.

Mr. Hatchell. Oh, indeed, it is double. I go it at least ten times a year. It is at least fifty-five miles from Dublin, and is something beyond at the other side. Come, now, I put you to your multiplication. Multiplication is vexatious, addition is as bad [*laughter*], tot up and carry one [*laughter*]. I would not add fractions, they might set you mad.—I can't exactly say the distance.

Did he say they came through Dublin?—He said they came through Kildare.

You did not ask him where they all slept?—No.

Now, did you really believe him?—Indeed, I had only his word for it [*laughter*]."

The showing up by Mr. Hatchell of constable Maguire, who pretended to much more military science than he really possessed, must have afforded infinite amusement, and presents an excellent specimen of the Irish counsellor and Irish witness *rollicking* together.

They were coming in parties, you said?—Yes, they were coming in military array.

Oh, dear me, in military array. Now, had they their sticks on their shoulders this way? [*Here the learned gentleman shouldered a large pen amid great laughter.*] Was that the way, eh? — No, they had not.

Do you understand me? — I suppose I do.

Did they carry arms? — No.

Did they come to the post? — No.

Did they present arms when the general came up? — No.

Did they charge? — No.

They did not? — No.

They did not? — No.

And yet they came in military array. Wonderful Captain Maguire [*immense laughter*]. They came in military array, and did not carry arms, did not come to the post, did not present arms to the general, did not charge, and yet they came in military array? — Yes, they did.

Did they halt? — Some of them might have halted.

Do you mean that some of them were lame?—There might be some of them lame, and in that sense they might halt [*laughter*].

Where did they halt? — Near the platform.

That was when they could not go further? — Yes.

Did they stand at ease? — I suppose they did, for some of them must have come a good distance, and therefore they must have been tired.

Oh, they wanted rest, and then they stood at ease? — Just so.

They marched, and halted, and stood at ease because they were tired? — Yes.

Do you know any thing about marching?—Yes, something.

Were you ever drilled? — I was.

Do you know the first movement? — When a person is desired to march, he is to put his left leg foremost [*shouts of laughter*].

And let your right leg follow it? — Yes, that's it.

Well, now, were the people coming in military array, with their left legs foremost? — I do not know which of their legs was foremost.

Did you ever hear 'Come, brave boys, we're on for marching.' Can you explain the difference between the right and left legs? — Not exactly.

Which of your legs is foremost now? — I cannot say.

Come, Captain Maguire — general, I think I ought to call you — did you ever read Dundas on Manœuvring? — Yes, a little.

Well, now, having gotten so far with your left leg foremost, what do you mean by rank and file? — Two deep.

Ah hah! you are *too deep* for me. On your oath, does it mean two deep or a single file? — I cannot tell exactly.

Oh, there you are, Mr. Captain Maguire, on Dundas's tactics. Do you mean to tell that jury that the people all came in, marching two deep? — I do not.

Will you swear that any one body of them came two deep? — Some of them came two deep in a *kind* of military order.

Oh! a kind of military order, was it? — Yes.

By virtue of your oath, sir, did you not swear a moment ago that they came in rank and file? — It was a kind of rank and file.

Like mounting the Castle guard? — Exactly so.

By virtue of your solemn oath will you swear that any one of the parties you saw came in order such as the guard goes in when relieving the other guard at the Castle? — Some of them did."

As it would not have looked like a genuine Irish trial without these sprinklings of wit, fun, and humour, another peculiarity of the Four Courts was manifested in a remarkable manner: the keen sparring matches between the judges, counsel, and attorneys.

The following forms a striking instance in which the petulance of counsel and agent was crushed with a strong hand. It having been proposed that the witness should read from the file of the *Weekly Freeman* produced by the defendants a speech delivered by Mr. O'Connell,

Mr. Brewster said — "This is not the stamp-office copy that is produced?

Mr. Fitzgibbon. Can any man in the world entertain a shadow of a doubt that the type is precisely the same; and, in the name of common sense, I ask, can there be any objection to Mr. Vernon reading from the copy produced?

Judge Crampton. Common sense ought to tell you, Mr. Fitzgibbon, that the one is evidence and the other is not."

On another occasion, Mr. Freeman was putting, as the Attorney erroneously thought, leading questions to a prevaricating witness.

"Did you hear Mr. O'Connell say any thing about tithes?

Mr. Cantwell. Really in justice to my client I must interfere; this is not fair.

Chief Justice. You must not interrupt the Court, Mr. Cantwell.

Mr. Cantwell. I must, and hope I shall do my duty, my lord, and I hope your lordship will do yours.

Chief Justice. The Court will do its duty, and if you interrupt it again you will be removed forthwith.

Mr. Cantwell. I am satisfied that the Court will do its duty, but I must bring under its notice an illegal question.

Chief Justice. It is not your duty to address the Court when you have counsel to do so."

The same petulance and irritability marked their little dialogues, partly aside, to each other. Mr. Holmes was examining the printer to the Association, that he might fasten on its members the responsibility of the printed instructions for Repeal Wardens, and was so hard pressed with perpetual objections that he exclaimed, "These young men think I am not able to stand out, and I am." Resuming his enquiry as to the printing with a jocular remark, "It was rather a good job — wasn't it?" he was again interrupted by Mr. Whiteside.

"I object to this. It is not a fit question at all. It's a mighty witty observation, though, but has nothing to say to the case at all.

Judge Perrin. It is not a question at all — it is merely an observation.

Mr. Holmes. Well, Mr. Whiteside, if I stopped you in asking questions that are not relevant to the case, I would

never have done. You ask questions which have nothing to do with the case at all.

Mr. Whiteside. True; but that is on cross-examination; and you seem to forget that you are now on the direct examination for the Crown."

In cross-examination, Mr. Whiteside contented himself with asking the witness if he had printed certain documents, and on his admitting he had, proposed to hand them in, when Mr. Holmes suggested a further question, but before he could propound it, was stopped by the volatile counsel for the prisoner.

"I object to your asking him any question — it does not arise out of the cross-examination.

Mr. Holmes. Very well: that is the only legal objection you have made yet."

Similar symptoms of impatience, unredeemed by humour, characterised the following scene: —

Mr. Freeman. Look at the large card I have handed you, is it called a member's card?—Yes, it is; I saw similar cards to this before.

Mr. Freeman [*repeating the answer*]. — He saw similar cards to that before.

Mr. Fitzgibbon. The answer was heard all over the Court. I request you will not repeat the answers.

Mr. Freeman. What sort of a card is this? [*the large card handed to witness.*] — It is a member's card.

Mr. Freeman [*repeating the answer*]. — It is a member's card.

Mr. Fitzgibbon. I tell you we all heard the answer. You *must* not repeat his answers.

Mr. Freeman. Oh, it's not important.

Mr. Fitzgibbon. Then, that's an additional reason why you should not repeat his replies. I submit my lord, that Mr. Freeman is not to echo the answers of this witness.

Mr. Freeman. I hope you have no cold.

Mr. Fitzgibbon. Don't mind my cold; don't repeat the answers."

At another time, Mr. Fitzgibbon cross-examined a policeman, as to one of O'Connell's pantomimic exhibitions.

"And you say that he made a very significant pause in it? — Yes, he made a very significant pause.

What did it mean? — It was such a language as was intended to convey something not expressed!

What was he saying while he was making that pause? — He was saying nothing, of course.

Tell us now what he was saying before he made the pause? — One of the pauses was in this sentence, 'To submit to the Saxon and oppressor, and to be ground to the dust, but — we were never conquered.' That is the best description of the pause I can give you."

Serjeant Warren, in re-examination, tried to turn this solemn pause into a joke, greatly to the indignation of the prisoner's counsel.

"You spoke of Mr. O'Connell having made a pause. Did you ever hear of cat's paws? — I did, and I heard of people being made cat's paws of also [*great laughter*]."

Mr. Fitzgibbon. And that arose out of my cross-examination! Well, I heard an exclamation, a few days ago, from the other side, "And that was said by one of her Majesty's counsel." I think I may well say now, "And that was said by one of her Majesty's sergeants, as arising out of my cross-examination in a criminal case."

In arguing a law point of some nicety, whether, when an article in a newspaper was read for the prisoner, the other side had a right to have the whole paper read as their evidence, from the title to the printer's name, the same indomitable counsel, Mr. Fitzgibbon, gave the Attorney-General a touch of his quality. "That first law officer submitted that if the article in the *Nation*, headed 'The Morality of Rebellion,' made reference to any portion of a speech of Mr. O'Connell, published in the same paper, which speech had reference to the grievances of Ireland, I then admit you would be at liberty to go over to that portion of the speech; but there is no reference to any speech of the sort, nor was there any allusion to the people in the speech of Mr. O'Connell."

Mr. Fitzgibbon said that his intellect was too obtuse to

comprehend how an argument upon a point of law could be affected by translating, as the Attorney-General had done, the sentence, "the morality of war," into "the morality of rebellion." He could not comprehend it — he would not reply to it, except by deprecating it as an unjustifiable attempt to bias the jury — for the address was to the jury although his face was to the Court. He would not answer it otherwise than as he had always answered, and ever would, such attempts, by denouncing it as grossly unfair and improper conduct.

Throughout the trial, the object of the numerous counsel to gain a verdict by any means, *rem quocunque modo, rem*, was clear and undisguised. No trick of Old Bailey ingenuity seemed too low, no point too frivolous to make, that they might, *per fas aut nefas*, procure immunity for the accused. Mr. Justice Burton being prevented attending the court on the seventh day, by a serious cold, Mr. Hatchell objected to the case being proceeded with in his absence.

An objection equally futile was taken on the 1st of February, that, term having ended, the Court had no power to proceed with the trial. True to these technicalities to the last, Mr. Monahan objected, at the close of the trial, that, as it was then Sunday morning, the Court had no power to do any judicial act. In each case the Chief Justice, with exemplary equanimity, took a note of the objection. He might have responded with Lord Tenterden, "There's no need to take a note; I shall remember the objection as long as I live!"

Some of the turns by which their counsel diverted the jury's attention from the points which told most against the Traversers were ingenious and happy. When Mr. Vernon, the deputy clerk of the Crown, had read the "Memory of the Dead" with such effect, that a universal murmur of approbation attended the conclusion, and had afterwards read that seditious article in the *Nation*, headed "Something is Coming," Mr. Whiteside, to divert the attention of the jury from such clear demonstrative evidence of rebellious intent,

quickly addressed the officer of the Court. "Mr. Vernon, will you have the goodness to turn to page 256 of that paper, and read the poetry headed, 'To my beautiful, my Own,' by Ulick O'Shane?"

Mr. Vernon then read the poetry, and read it well, amidst great laughter. It had nothing whatever to do with the trial, and would appear to have been called for by counsel to season the somnolency which had somehow crept upon the Court by this long series of readings.

At the termination, Mr. Whiteside, addressing Mr. Vernon with a peculiar and happy theatrical gesture, said — "I thank you."

Mr. Sheil, better known as the author of "Evadne," and as a brilliant speaker in the Commons, than for his advocacy at the bar, opened the case for the defence, amid all that could encourage and excite an orator, — the hushed silence of a crowded court, — the presence of rank, beauty, and fashion, — far more, the contention of eloquent friends and rivalry of keen antagonists.

"I am counsel for Mr. John O'Connell. The importance of this case is not susceptible of exaggeration, and I do not speak in the language of hyperbole, when I say that the attention of the empire is directed to the spot in which we are assembled. How great is the trust reposed in you — how great is the task which I have undertaken to perform? Conscious of its magnitude, I have risen to address you, not unmoved, but undismayed; no — not unmoved — for at this moment how many incidents of my own political life come back upon me, when I look upon my great political benefactor, my deliverer, and my friend; but of the emotion by which I acknowledge myself to be profoundly stirred, although I will not permit myself to be subdued by it, solicitude forms no part. I have great reliance upon you — upon the ascendancy of principle over prejudice in your minds; and I am not entirely without reliance upon myself. I do not speak in the language of vain-glorious self-complacency when I say this. I know that I am surrounded by men infinitely superior to me in every forensic, and in almost every intellectual, qualification. My confidence is derived, not from any

overweening estimate of my own faculties, but from a thorough conviction of the innocence of my client. I know—and I appear in some sort not only as an advocate, but a witness before you—I know him to be innocent of the misdeeds laid to his charge. The same blood flows through their veins—the same feelings circulate through their hearts:—the son and the father are in all political regards the same, and with the father I have toiled in no dishonourable companionship for more than half my life in that great work, which it is his chief praise that it was conceived in the spirit of peace — that in the spirit of peace it was carried out—and that in the spirit of peace it was brought by him to its glorious consummation. I am acquainted with every feature of his character, with his thoughts, hopes, fears, aspirations. I have—if I may venture to say—a full cognizance of every pulsation of his heart. I know—I am sure as that I am a living man—that from the sanguinary misdeeds imputed to him, he shrinks with abhorrence. It is this persuasion—profound, impassioned—and I trust that it will prove contagious—which will sustain me in the midst of the exhaustion incidental to this lengthened trial; will enable me to overcome the illness under which I am at this moment labouring; will raise me to the height of this great argument, and lift me to a level with the lofty topics which I shall have occasion to treat in resisting a prosecution, to which in the annals of criminal jurisprudence in this country no parallel can be found. Gentlemen, the Attorney-General, in a statement of eleven or twelve hours' duration, read a long series of extracts from speeches and publications, extending over a period of nearly nine months. At the termination of every passage which was cited by him, he gave utterance to expressions of strong resentment against the men by whom sentiments so noxious were circulated, in language most envenomed. If, Gentlemen of the Jury, his anger was not simulated; if his indignation was not merely official; if he spoke as he felt, how does it come to pass that no single step was ever taken by him for the purpose of arresting the progress of an evil represented by him to be so calamitous? He told you that the country was traversed by incendiaries who set fire to the passions of

the people; the whole fabric of society, according to the Attorney-General, for the last nine months has been in a blaze; wherefore, then, did he stand with folded arms, to gaze at the conflagration? Where were the Castle fire-engines — where was the indictment — and of an *ex-officio* information, what had become? Is there not too much reason to think that a project was formed, or rather that a plot was concocted, to decoy and ensnare the Traversers, and that a connivance, amounting almost to sanction, was deliberately adopted as a part of the policy of the government, in order to betray the Traversers into indiscretions of which advantage was, in due time, to be taken? I have heard it said that it was criminal to tell the people to 'bide their time;' but is the government to 'bide its time,' in order to turn popular excitement to a useful official account? The public prosecutor who gives an indirect encouragement to agitation, in order that he may afterwards more effectually fall upon it, bears some moral affinity to the informer, who provokes the crime from whose denunciation his ignominious livelihood is derived. Has the Attorney-General adopted a course worthy of his great office — worthy of the ostensible head of the Irish bar, and the representative of its intellect in the house of Commons? [*a laugh.*] Is it befitting that the successor of Saurin and of Plunket, who should 'keep watch and ward' from his high station over the public safety, should descend to the performance of functions worthy only of a commissary of the French police; and in place of being the sentinel, should become the 'Artful Dodger' of the state?

"The honourable gentleman did not fish with lines — if I may avail myself of an illustration derived from the habits of my constituents at Dungarvan — but cast a wide and nicely constructed trammel-net, in order that, by a kind of miraculous catch, he might take the great agitator-leviathan himself — a member of parliament, Tom Steele, three editors of newspapers, and a pair of priests in one stupendous haul together. How large a portion of the case of the Crown depends upon this implication of Mr. O'Connell with three Dublin newspapers! He is accused of conspiring with men who certainly never conspired with each other. They pay

their addresses to the same mistress, and cordially detest each other. I remember to have heard Mr. Barnes, the celebrated editor of the *Times* newspaper, once ask Mr. Rogers what manner of man was a Mr. Tomkins? to which Mr. Rogers replied, 'He was a dull dog, who read the *Morning Herald.*'"

None can deny the cleverness of this beginning, the sharp turns, sly hits, little sarcasms, and pleasant ridicule; but the cause wanted something beyond and above this, more solid, and grave and substantial. He shot, like Teucer, his little darts beneath the protecting presence of O'Connell, which was his shield of Ajax. "The proprietor of the *Weekly Register*," he said, "as a member, ought to have been included, but he was not. Why? Because there were no poems in his paper like 'The Memory of the Dead,' which, although in direct opposition to the feelings of Mr. O'Connell, and which he had frequently expressed, is now used in evidence against him. Gentlemen, the promises of Mr. Pitt, when the union was carried, have not been fulfilled—the prospects presented by him in his magnificent declamation have not been realised; but if, in so many other regards, we have sustained a most grievous disappointment—if English capital has not adventured here—if Englishmen have preferred sinking their fortunes in the rocks of Mexico rather than embark them in speculations connected with this fine but unfortunate country—yet, from the union let one advantage be at all events derived: let English feelings—let English principles—let English love of justice—let English horror of oppression—let English detestation of foul play—let English loathing of constructive crime, find its way amongst us! The Orangemen were charged with conspiracy to associate Lord Wellesley with the exports of Ireland (*an Ovidian prettiness*), but the jury refused to convict. God forbid that I should ever live to see the time, or that our children should ever live to see the time, when there shall be arrayed four Catholic judges at a trial at bar upon that bench, when the entire of the government bar who shall be engaged in a public prosecution shall be Roman Catholic; and when a Catholic crown solicitor shall strike eleven Protestants from the special jury list, and leave twelve Roman

Catholics in that box. The Attorney-General had adverted to a great number of diversified topics, and referred to the great era of Irish parliamentary independence, 1782. That he should have been so multifarious and discursive I do not complain. I shall go somewhat farther than the year 1782; but long tracts of time may be swiftly traversed."

Poetical, historical, satirical, every thing but legal, Mr. Sheil drew a spirited analogy between the prosecution of the Draper's Letters and the present, as he said, equally tyrannical attempt at coercion, and introduced an apt quotation from Swift's "Seasonable Advice to the Jury."

> "If then, oppression has not quite subdued
> At once your prudence and your gratitude—
> If you yourselves conspire not your undoing—
> And don't deserve, and won't bring down your ruin—
> If yet to virtue you have some pretence—
> If yet you are not lost to common sense,
> Assist your patriots in your own defence;
> That stupid cant, 'he went too far,' despise,
> And know that to be brave is to be wise;
> Think how he struggled for your liberty,
> And give him freedom while yourselves are free."

"At the same time was circulated the memorable and apt quotation from Scripture, by a Quaker (I don't know, Gentlemen, whether his name was Robinson, but it ought to have been) —'And the people said unto Saul, shall Jonathan die who hath wrought this great salvation in Israel? God forbid! As the Lord liveth, there shall not one hair of his head fall to the ground, for he hath wrought with God this day; so the people rescued Jonathan, and he died not.' Thus admonished by verse, law, and Scripture, the grand jury assembled. It was in vain that the Lord Chief Justice exerted himself for a conviction. The hour for intimidation was passed."

This was meant as a covert stroke against Chief Justice Pennefather, and the succeeding extract from Scott's remarks on Swift would be instantly applied to O'Connell. "'Thus victoriously terminated the first grand struggle for the independence of Ireland. The eyes of the kingdom were now moved with one consent upon the man by whose unbending fortitude and pre-eminent talent this triumph was accom-

plished. The Draper's head became a sign; his portrait was engraved, worn upon handkerchiefs, struck upon medals, and displayed in every possible manner as the *Liberator* of Ireland.'"

The following comparisons and fancied list of grievances show great rhetorical ability. "A prosecution was not instituted against the great conspirators of 1782. No Attorney-General was found bold enough to prosecute Flood and Grattan for a conspiracy. With what scorn would twelve Irishmen have repudiated the presumptuous functionary by whom such an enterprise should have been attempted! Irishmen then felt that they had a country; they acted under the influence of that instinct of nationality, which, for wise providential purposes, the Author of nature has implanted in us. We were then a nation — we were not broken into fragments by those dissentions by which we are at once enfeebled and degraded. If we were eight millions of Protestants (and, Heaven forgive me! there are moments when, looking at the wrongs done to my country, I have been betrayed into the guilty desire that we all were); but, if we were eight million Protestants, should we be used as we are? Should we see every office of dignity and emolument in this country filled by the natives of the sister island? Should we see the just expenditure requisite for the improvement of our country denied? Should we submit to the odious distinctions between Englishmen and Irishmen introduced into almost every act of legislation? Should we bear with an arms' bill, by which the bill of rights is set at nought? Should we brook the misapplication of a poor law? Should we allow the parliament to proceed as if we had not a voice in the legislature? Should we submit to our present inadequate representation? And should we not peremptorily require that the imperial parliament should hold a periodical session for the transaction of Irish business in the metropolis of a powerful, and, as it then would be, an undivided country? But we are prevented by our wretched religious distinctions from co-operating for a single object, by which the honour and substantial interests of our country can be promoted. Fatal, disastrous, detestable distinctions! Detestable, because they are not only repugnant to the genuine spirit of Christianity, and

substitute for the charities of religion the rancorous antipathies of sect; but because they practically reduce us to a colonial dependency, make the union a name, substitute for a real union a tie of parchment which an event might sunder —convert a nation into an appurtenance, make us the footstool of the minister, the scorn of England, and the commiseration of the world. We, madmen that we are, arrayed by that fell fanaticism which, driven from every other country in Europe, has found a refuge here, precipitate ourselves upon each other in those encounters of sectarian ferocity in which our country, bleeding and lacerated, is trodden under foot. We convert an island that ought to be one of the most fortunate in the world into a receptacle of degradation and of suffering; counteract the designs of Providence, and enter into a conspiracy for the frustration of the beneficent designs of God."

Great applause and clapping of hands in court rewarded this fine passage; and after silence had been with difficulty restored, Mr. Sheil dilated on the marvellous progress that Ireland had made when her freedom was recovered. "Her commerce and manufactures doubled; the plough climbed to the top of the mountain, and found its way into the centre of the morass. This city grew into one of the noblest capitals of the world—wealth, and rank, and genius, and eloquence, and every intellectual accomplishment, and all the attributes by which men's minds are exalted, refined, and embellished, were gathered here. The memorials of our prosperity remain. Of that prosperity architecture has left us its magnificent attestation. This temple, dedicated to justice, stands among the witnesses, silent and solemn, of the glory of Ireland, to which I may appeal. It is seen from afar off. It rises high above the smoke and din of this populous city; be it the type of that moral elevation, over every contaminating influence, to which every man who is engaged in the sacred administration of justice ought to ascend. The penal laws were enacted by slaves and relaxed by freemen. The Protestants of Ireland had been contented to kneel to England upon the Catholic's neck. They rose to a nobler attitude, and we were permitted to get up. England looked on with jealousy, and a gentleman whose name ought to have been Copley, said, 'These men

are foreigners.' To this very day there prevails in the feelings of Englishmen towards this country the instinct of domination. The union was carried by corruption and by fear. The shrieks of the rebellion still echoed in the nation's ear. The *habeas corpus* act was suspended, and martial law had been proclaimed. The country was in a state of siege—the minister had a rod of steel for the people, and a purse of countless gold for the senator. But in the midst of that parliamentary profligacy, at which even Sir Robert Walpole would have been astonished, the genius of the country remained incorruptible—Grattan, Curran, and the rest of those famous men, whose names cast so bright a light upon this, the brightest part of our history, never for a moment yielded to a sordid or ignoble impulse. All the distinguished men of the bar were faithful to their country. Lord Plunket denied the right of parliament to destroy itself. Mr. Saurin appealed to the authority of Mr. Locke. The same course was taken by Mr. Bushe, whom we have lost so lately — Bushe, whom it was impossible for those by whom the noblest eloquence was justly prized not to admire—whom it was impossible for those by whom the purest worth was justly estimated not to reverence; and whom it was impossible for those by whom a most generous and exalted nature could be appreciated, not to love. The Attorney-General has stated that the opinions of these eminent persons, delivered at the time of the Union, ought to be held in no account; so that the most important principles solemnly laid down in parliamentary debate are to be regarded as little better than mere forensic asseveration. I can now account for some speeches which I heard in the House of Commons regarding the education question. You have heard, Gentlemen, in the course of this trial, something of the morality of war, and also something of the morality of rebellion, which the right honourable gentleman was pleased to substitute as a synonym for war; but of the morality of parliament, I trust you will not form an estimate from the specimen presented to you by her Majesty's Attorney-General. But these opinions, he observed, were expressed before the act of parliament was passed. Surely the truth of great principles does not depend upon an

act of parliament. They are not for an age, but for all time. They are immutable and imperishable. They are immortal as the mind of man, incapable of decomposition or decay. The union was a bargain and sale—as a sale it was profligate, and the bargain was a bad one—for better terms might have been obtained, and may be still obtained, if you do not become the auxiliaries of the Attorney-General. We are told by some that our manufactures and our agricultural produce has greatly augmented; but what is the condition of the great bulk of the people of the country, which is, after all, the consideration which, with Christian statesmen, ought to weigh the most? The greater happiness of the greater number is a Benthamite antithesis; but there is a great deal of Christianity condensed in it. When travellers from France, from Germany, from America, arrive in this country, and contemplate the frightful spectacle presented by the misery of the people, although previously prepared by descriptions of the national misery, they stand aghast at what they see, but what they could not have imagined. Why is this? The fault, as it appears to me, is entirely in that system of policy which has been pursued by the imperial parliament, and for which the union is to be condemned."

The rhetorical advocate gave a clever *résumé* of the disastrous measures passed by the imperial parliament since the Union. "In 1810, a decade had elapsed when the country was in a miserable condition — its destitution, its degradation, were universally felt, and by none more than the Protestants of Dublin. A requisition was addressed to the high sheriff of the city, by men of the greatest weight and consideration amongst us. A meeting was called, and O'Connell made a speech precisely similar to those numerous and most powerful harangues which have been read to you. [*Mr. Ford, by permission of the Court, then read the speech, and Mr. Sheil resumed.*] That long series of speeches and of writings produced by Mr. O'Connell within the last nine months, are no more than an expansion of the speech of 1810. Was he a conspirator in 1810? Grattan wrote in reference to the resolutions then voted, 'I shall support the repeal of the Act of Union. You will please to observe, that a pro-

position of that sort, in parliament, to be either prudent or possible, must wait *till it is called for and backed by the nation.*' Mark that phrase. It occurs again and again in the speeches of Mr. O'Connell. Mr. O'Connell again and again declares that unless backed by the nation nothing can be accomplished by him. And if it be a crime to apply all the resources of his intellect, with an indefatigable energy and an indomitable perseverance, to the attainment of that object by the means described by Mr. Grattan in the phrase, 'backed by the nation,' then is the son of Daniel O'Connell guilty."

The fallacy lay in this, that the phrase "backed by the nation" might be supposed to comprehend such a backing as O'Connell's collected myriads, no such collection being then contemplated, nor perhaps attainable, for the supremacy of the priesthood under the Maynooth system had not yet overshadowed the land.

Mr. Sheil then put together, with dramatic skill, bits of historical tiling, praised Saurin for sincerity, sneered at Sir Robert Peel, lauded O'Connell as the parent of the Catholic Association, and submitted two questions to the jury. "Do you think that up to the 13th of April, 1829, the day on which the royal assent was given to the Catholic Relief Bill, the system of government instituted and carried on, under the auspices of an imperial parliament, was so wise, so just, so salutary, so fraught with advantages to this country — so conducive to its tranquillization and to the development of its vast resources — that for nine-and-twenty years the union ought to have been regarded as a great legislative blessing to this country? The second question I shall put to you is this — Does it not occur to you that if the present indictment for a conspiracy can be sustained, an indictment for a conspiracy might have been just as reasonably preferred against the men who had associated themselves for the attainment of Catholic emancipation? There is not a count in this indictment which, by the substitution of 'Catholic emancipation' for 'Repeal' might not have been made applicable to the great struggle of the Irish Catholics in 1828 and 1829. Money was collected by the Catholic Association. In America, and more especially in Canada,

strong sympathy for Catholic Ireland was expressed. In the Chamber of Deputies, M. Chateaubriand adverted to the state of Ireland in the language of minacious intimation. Enormous assemblages were held in the south of Ireland, but more especially in the county of Kilkenny. Speeches were delivered by Mr. O'Connell and by others fully as inflammatory as any which have been read to you. What would have been thought of an indictment for a conspiracy against Mr. O'Connell, against the *Evening Post*, the *Freeman's Journal*, the *Morning Register*, Dr. Doyle, and my friend, Tom Steele, who was at that time, as he is now, a knight-errant animated by a noble chivalry against oppression in every form? During the last nine months, the Attorney-General had ample opportunities, if his own statement be well founded, of instituting prosecutions against individuals for what they themselves had written or done. In this proceeding, whose tardiness indicates its intent, you will not, I feel confident, become his auxiliaries. A coercion bill, if the repeal of the union is to be put down, would be preferable, for it operates as a temporary suspension of liberty, but the effects of a verdict are permanently deleterious. The doctrine of conspiracy may be applied to every combination of every kind. It is directed against the Repeal Association to-day; it may be levelled against the Corn-law League to-morrow. In one word, every political society, no matter how diversified their objects, or how different their constitution, is within its reach."

Mr. Sheil bitterly denounced the author of the prosecution, and introduced his own pet substitute for a repeal of the union, as a lure to the Dublin tradesmen. "Sir James Graham has Ireland under his control. From the Home Office this prosecution directly emanates. Gamblers denounce dice — drunkards denounce debauch — against immoralities let wenchers rail. When Graham indicts for agitation, his change of opinion may, for aught I know, be serious, nor have I from motives of partisanship the slightest desire, especially behind his back, to assail him; I will even go so far as to admit that his conversion may have been disinterested; but I do say that he is, of all men, the last under

whose auspices a prosecution of this character ought to be carried on. No single measure for the substantial and permanent amelioration of the country has been adopted; and here we are, at the opening of a new session of parliament, with a poor-rate on our estates, a depreciating tariff in our markets, and a state prosecution in Her Majesty's Court of Queen's Bench. I do not know that there is any one man among you favourable to the repeal of the union; but if every one of you is fearful of that measure becoming ultimately the occasion of a dismemberment of the empire, still its discussion may not be useless. But it is not by ratiocination that a redress of grievances can be obtained. The agitator must sometimes follow the example of the diplomatist, who asks for what is impossible, in order that what is possible may be obtained. It must strike the least observant that when the government complains most vehemently of demagogue audacity, their resentment is the precursor of their concessions. To mere numbers, without intelligence, organisation, or public spirit, I for one attach no value. The simultaneous, the miraculous abandonment of those habits to which Irishmen were once fatally addicted at the exhortation of an humble friar, is a strong indication of what might be done by a good government with so fine a people. It is recommended that the imperial parliament should sit at certain intervals in this great city. I cannot see any sound objection to the imperial parliament assembling in the month of October, for the discharge of Irish business alone, and that all imperial questions should be reserved until the London session commenced, as it now does, in the month of February. This city would appear in renovated splendour. Your streets would be shaken by the roll of the gorgeous equipages in which the first nobles of the country would be borne to the senate-house, from which the money-changers should be driven. The mansions of the aristocracy would blaze with that useful luxury which ministers to the gratification of the affluent, and to the employment and the comforts of the poor. The sovereign herself would not deem the seat of her parliament unworthy of her residence. The frippery of the viceregal court would be

swept away. We should look upon royalty itself, and not upon the tinsel image; we should behold the Queen of England, of Ireland, and of Scotland in all the pomp of her imperial regality, with a diadem — the finest diadem in the world — glittering upon her brow, while her countenance beamed with the expression of that sentiment which becomes the throned monarch better than the crown. But if you, Gentlemen, shall not only assist in an undertaking so reasonable and so safe, but shall assist the Attorney-General in crushing the men who have had the boldness to complain of the grievances of their country, you will lay Ireland prostrate. Every effort for her amelioration will be idle. Every remonstrance will not only be treated with disregard, but with disdain; and for the next twenty years, we may as well relinquish every hope for our country. Gentlemen, you may strike agitation dumb — you may make millions of mutes; but beware of that dreary silence, whose gloomy taciturnity is only significant of the determination of its fearful purpose. Speeches as violent had been uttered by English and Irish Tories — meetings as monstrous had been summoned by Orangemen."

Against the weakest point of the prosecution, that which charged an attempt to divert the army from its allegiance, Mr. Sheil directed a keen shaft from the report of the Committee on Orange Lodges, and put, in reference to machinations charged against them, some pertinent queries. "If it was the object of the Traversers to seduce the army from their allegiance, would not expedients have been adopted very different from those imputed to the defendants? Would not repeal societies have been formed? Would not a clandestine correspondence have taken place with the 'military brethren?' Would not money have been distributed to the soldiery? Would not the propagators of mutiny have been located in the public-houses frequented by soldiery? Would not Roman Catholic priests who attend at the military hospitals have been charged to instil repeal principles into the soldier's ear?"

With all his fervid poetical recollections of conspirators on the stage, the skilful rhetorician denied that these open

proceedings could originate in conspiracy. "Gentlemen, how do men proceed who engage in a guilty enterprise of this kind? They bind each other by solemn oaths. They are sworn to secrecy, to silence, to deeds, or to death. They associate superstition with atrocity, and heaven is invoked by them to ratify the covenants of hell. They fix a day, an hour, and hold their assemblages in the midst of darkness and of solitude, and verify the exclamation of the conspirator in the language of our great observer of nature —

> "'Oh, Conspiracy,
> Where wilt thou find a cavern dark enough
> To hide thy monstrous visage?'

How have the repeal conspirators proceeded? Every one of their assemblages have been open to the public. For a shilling, all they said, or did, or thought, was known to the government. Every thing was laid bare and naked to the public eye; they stripped their minds in the public gaze. No oaths, no declaration, no initiation, no form of any kind was resorted to. They did not even act together. Mr. Duffy, proprietor of the *Nation*, did not attend a single meeting in the country. My client attended only three; Mr. Tierney, the priest, attended no more than one. It would have been more manly on the part of the Attorney-General to have indicted Dr. Higgins or Dr. Cantwell, or, as he was pleased to designate them, Bishop Higgins and Bishop Cantwell. But wherefore is not this redoubted Higgins indicted, or why did you not assail the great John of Tuam himself? He would not have shrunk from your persecution, but, with his mitre on his head and his crozier in his hand, he would have walked in his pontifical vestments into gaol, and smiled disdainfully upon you. But you did not dare to attack him, but fell on a poor Monaghan priest, who only attended one meeting, and only made one speech about the 'Yellow Ford,' for which you should not include him in a conspiracy, but should make him professor of rhetoric at Maynooth."

All O'Connell's speeches refuted the charge of disloyal conspiracy, and his life of forty-four years refuted it. The

vizor must have dropped off, if he had worn a mask. His conduct to Sir Abraham Bradley King, a fierce political antagonist, proved O'Connell's charity and character. He procured a pension for his ancient enemy, and on the bed of death, Sir A. B. King said, "When I shall have been buried, go to Daniel O'Connell, and tell him that the last prayer of a grateful man was offered up for him, and that I implored heaven to avert every peril from his head."

The conduct of O'Connell showed good and kindly feeling, but the inference sought to be deduced seems a patent sophism, a clear *non sequitur*. Because a political leader acted generously to an opponent, he could be neither ambitious, nor factious, nor mutinous.

"You may deprive him of liberty — you may shut him out from the face of nature — you may inter him in a dungeon, to which a ray of the sun never yet descended; but you never will take away from him the consciousness of having done a good and a noble action, and of being entitled to kneel down every night he sleeps, and to address to his Creator the divinest portion of our Redeemer's prayer. The man to whom that letter was addressed, and the son of the man to whom that letter was addressed, are not guilty of the sanguinary intents which have been ascribed to them, and of this they put themselves upon their country. Rescue that phrase from its technicalities — let it no longer be a fictitious one; if we have lost our representation in the parliament, let us behold it in the jury box; and that you participate in the feeling of millions of your countrymen let your verdict afford a proof. But it is not to Ireland that the aching solicitude with which the result of this trial is intently watched will be confined. There is not a great city in Europe in which, upon the day when the great intelligence shall be expected to arrive, men will not stop each other in the public way, and inquire whether twelve men upon their oaths have doomed to incarceration the man who gave liberty to Ireland? Whatever may be your adjudication, he is prepared to meet it. He knows that the eyes of the world are upon him, and that posterity — whether in a gaol or out of it — will look back to him with admiration; he is almost in-

different to what may befal him, and is far more solicitous for others at this moment than for himself. But I — at the commencement of what I have said to you I told you that I was not unmoved, and that many incidents of my political life, the strange alternations of fortune through which I have passed, came back upon me. But now the bare possibility at which I have glanced, has, I acknowledge, almost unmanned me. Shall I, who stretch out to you in behalf of the son the hand whose fetters the father had struck off, live to cast my eyes upon that domicile of sorrow, in the vicinity of this great metropolis, and say, 'Tis there they have immured the Liberator of Ireland with his fondest and best beloved child?' No! it shall never be! You will not consign him to the spot to which the Attorney-General invites you to surrender him. No! When the spring shall have come again, and the winter shall have passed, — when the spring shall have come again, it is not through the windows of a prison-house that the father of such a son, and the son of such a father, shall look upon those green hills, on which the eyes of many a captive have gazed so wistfully in vain; but in their own mountain home again they shall listen to the murmurs of the great Atlantic; they shall go forth and inhale the freshness of the morning air together; 'they shall be free of mountain solitudes;' they will be encompassed with the loftiest images of liberty upon every side; and if time shall have stolen its suppleness from his father's knee, or impaired the firmness of his tread, he shall lean on the child of her that watches over him from heaven, and shall look out from some high place far and wide upon the island, whose greatness and whose glory shall be for ever associated with his name. In your love of justice — in your love of Ireland — in your love of honesty and fair play — I place my confidence. I ask you for an acquittal, not only for the sake of your country, but for your own. Upon the day when this trial shall have been brought to a termination, when, amidst the hush of public expectancy, in answer to the solemn interrogatory which shall be put to you by the officer of the court, you shall answer, 'Not Guilty,' with what a transport will that glorious negative be welcomed! How will you be blest, adored, worshipped;

and when, retiring from this scene of excitement and of passion, you shall return to your own tranquil homes, how pleasurably will you look upon your children, in the consciousness that you will have left them a patrimony of peace by impressing upon the British cabinet, that some other measure besides a state prosecution is necessary for the pacification of your country!"

This approval of an ambulatory parliament, which Mr. Sheil had thrown out, did not meet with the sanction of his client John O'Connell, who, immediately on the re-assembling of the Court on Monday morning, thus manfully expressed his disapprobation: — "My Lord Chief Justice, I wish to make a few observations to the jury, if your Lordship pleases. Something dropped from my counsel, in his admirable speech on my behalf on Saturday, which, I fear, is calculated to create a misapprehension in the minds of the jury with regard to me, and, if your Lordship will permit me, I will not detain the Court many moments. I wish to say, Gentlemen, that, humble as I am, I have always been the advocate, and always will be the advocate, of the full, entire, and perfect right of the people of Ireland to an independent parliament. I am not, therefore, one of those of whom my counsel spoke, who would accept of an occasional, or even an annual, visit of the imperial parliament to Dublin, or any thing short of what I speak. I do not know whether this will prejudice me in your minds, Gentlemen of the Jury, but I would infinitely prefer that it should prejudice me rather than allow it to be supposed I would for a moment compromise what I consider to be the inalienable right of our country to an independent legislature."

For his client, the Rev. Mr. Tierney, Mr. Moore made a comparatively short but able speech, in the course of which, with a gentlemanly tone and spirit, but with considerable power and bitterness, he inveighed against the conduct of the Attorney-General. "He flings all the Traversers into one indictment; he entangles them, one and all, within the meshes of a prosecution for conspiracy; and although it is not even alleged that my client ever was in connection with any of the Traversers until the 3rd of October, after all the

monster meetings had ceased, he endeavours notwithstanding to make him responsible for all the antecedent acts of others; and my client is thus sought to be visited with the consequences of speeches he never heard, meetings he never attended, and publications which he never read! Is this fair? Is this candid? Is this ingenuous? When the Attorney-General called all the speeches and meetings illegal, he pronounced a bitter Philippic upon himself, and the government which he served. Am I not entitled to ask a question which presses itself irresistibly on the mind of every man, How has it happened that if those meetings, which occurred so frequently during a period of nine months, were illegal; if the language used at them was seditious, no prosecution was ever instituted until now? Did he lie designedly by, in order that crime might accumulate, and that he might be able to encompass whole masses of criminals within the meshes of the law — to enable him to select his victims at his pleasure? Was this the object of the Attorney-General? Was this the object of the government he serves? If the government were under the conviction that those meetings were all illegal, and the speeches seditious, if, I say, they knew all this, and yet designedly lay by while they saw crime committed, while they saw the infatuated people rushing in masses into a violation of the law, I would unhesitatingly brand such an act as an act of the greatest and most unparalleled baseness of which a government could be guilty! . . . This indictment deserves to be handed down to posterity as the Frankenstein of the imagination of Her Majesty's Attorney-General for Ireland. It will cost you hours to read, and would take you weeks to understand; and out of the mass of proofs which it would baffle the memory of a Pascal to recollect, he expects that you will extract for him a case of conspiracy. The meetings may have been illegal, the speeches seditious, the publications libellous; and if that be so, let each man be indicted for what he has done, said, or published, and let him undergo the consequences, but do not implicate my client with acts and language in which he never participated, or find him guilty for the conduct of others over whom he had no control. The only

real evidence against Mr. Tierney was M'Cann's statement that he declared, when talking to him, that the army was favourable to repeal, and partook of the enthusiasm of the people; that the army could not be so easily led to spill the blood of their fellow men; and that he referred to what the troops had done in Spain. Mr. Tierney denies that a particle of such conversation ever took place. M'Cann kept a diary, has noted the meeting, but not the conversation. Is not his omitting to do so strong evidence, either that it never occurred, or that he thought it unimportant; and, if he thought it unimportant, is it credible that he would have carried it in his recollection? My client talked of deeds not words, of hands and hearts. The Attorney-General says that when he talked of deeds, he meant deeds of violence; and that when he alluded to hands, he meant hands with arms in them. What right has the Attorney-General to put such an interpretation upon the words of my client? On the part of my client, I repudiate such a construction. I deny that there was any thing in his words to warrant such a construction. It is not for you or me to pronounce with authority on the motives of any man; this is for the Almighty alone, the great searcher of hearts, who can alone judge of the true motives of an individual; but when man comes to judge of the motives of his fellow man, he must look to his acts and conduct alone for their elucidation; and if you agree with me in the view which I have taken, and come to a conclusion that my client is entitled to a verdict of acquittal, I feel confident that it is a verdict you will be able to justify to your country now, and to your God hereafter."

Mr. Hatchell, who followed, studied brevity with an effect equally laudable, in defending the secretary, Mr. Ray. In addition to the general topics, he insisted on the special ground that his time and attention had been totally engaged by the discharge of the duties incidental to his situation. "He has not given me the slightest instructions to say that the Repeal movement did not enlist his good wishes in its favour, or that he does not, to the fullest extent, sympathise with the objects of the Association; but what he did, he did in the discharge of the duties connected with his official

character; what he did, he did in compensation for his salary, as in duty bound. And yet you are called upon to regard him in the light of a conspirator; and you are told to attribute every act of his, which he has performed in requital for his emoluments, as an act planned and achieved with the design of subverting the law and the constitution. Mr. Ray should have been made a witness, not a defendant, as Daniel Adams, the Secretary of the Constitutional Association, was on the prosecution of Horne Tooke, and then he could and would have told the objects of the society. He only attended two meetings near Dublin, to see a great sight on a public holiday, and he went with the female members of his family. He did nothing there; he made no speech there; he did not act as secretary; and taking that fact alone of his attendance there, the Crown might as well have included in the indictment every other person who was present there as Mr. Ray. The counsel for the Crown had not proved who was the printer of the placard, 'Ireland—her free Parliament, or the World in a Blaze!' My learned, acute, clever friends, perfectly understood their business. Every one knows that even at the assizes, such songs and publications were sold by wretched paupers, at the corners of the streets."

This brace of lawyers had consumed only a portion of the day between them; but the Court rose early, to oblige Mr. Fitzgibbon, between two and three in the afternoon. This counsel somewhat ungratefully occupied two full days with a speech, to which the American term "lengthy" may well be applied, and heavy as prolix.

He complained of between forty and fifty hours having been spent in solid reading; that the Attorney-General had aimed a blow below the belt, outraging the laws of manly combat, and not deserving quarter; that he had read one part of a page and had kept back the rest, which would have explained it. He had cited dicta, the true value of which was never more truly described than by Sir Anthony Hart, who, when somebody was pressing him with the dictum of a judge, said he always thought that the quotation of a dictum was an attempt to mislead one judge by misrepresenting another. All his friends had mistaken the true definition of conspiracy,

which meant the secret commission of crimes by more than one. There must be treachery and secrecy to make the guilt complete. There never was such an abuse of language as that, which asserts that conspiracy means concert or agreement, or combination to do an illegal act, or, in the alternative, to do a legal act by illegal means. Mr. Fitzgibbon scoffed at the remark of the Attorney-General that it was a momentous case, momentous no doubt in reference to the effect it must have on his position with his party: this explained his want of candour and asperity. "It may be productive of bad consequences to me in my career to fight this battle as I would fight it for myself: but I cannot regard that; I shall never eat the guilty bread which is earned by professional subserviency. I shall not retire to my pillow borne down with the remorseful feeling that I was an example of dereliction of duty."

The Attorney-General appears to have been goaded into a species of phrenzy by these unjustifiable attacks, and when the Court retired for refreshment, committed the incredible indiscretion of writing a challenge. This Mr. Fitzgibbon communicated to the bench, and it was only after a considerable interval, by the gentlemanly good offices of Mr. Moore, that the Judges were released from their state of painful embarrassment. Mr. Attorney-General withdrew his note, and Mr. Fitzgibbon resumed his endless reading. "Were this a case of guilt, it never could be so bewildered in chaos and confusion." Confessing that he wanted the faculty of condensation, he went over the speeches *seriatim*, adding further voluminous extracts of his own, and asking the jury, with some *naïveté*, "Do you believe that Mr. O'Connell ever in the course of his long life, gifted as he is with a capacity and understanding that belong to few persons — do you believe that he ever was dolt enough, driveller enough, idiot enough, to imagine that he or any man, against the sense of the national body of British subjects, could wrest the sceptre from the hand to whom it belongs by hereditary, and just, and legal, and constitutional right?" Notwithstanding his earnestness and occasional force, it was a relief to the Court

when, at the close of the second day's oration, he made way for Mr. Whiteside.

This consummate orator commenced his magnificent oration with a graceful apology for defects which no other than his own acute sensibility could discover, and opened the topics for defence in a tone of calm philosophy. "The principle involved in the issue—the all-pervading anxiety of the public —the very nature of the accusation itself—combine to mark out this as a question of no ordinary expectation. My anxiety is so to place before you the merit of my client's case, that truth may prevail, and the cause of public freedom triumph. I will not, at the outset, disguise from you that the result of this case is regarded by me with trembling apprehension, not from the vulgar terror of popular indignation, or an outbreak of lawless fury; because, should they occur, the arm of government is powerful enough to repress and punish such excesses. My apprehension arises from a better motive. I feel the importance of your decision. I am anxious for the character of our common country, for the purity of its justice, that your decision may be consistent with the principles of a free constitution, and may rest on the immovable ground of truth. Yours is a more severe duty than that of the moralist or critic. Although you are satisfied that the speeches made were intemperate and rash; and although you may condemn the character and style of many of the written productions in evidence before you, and disapprove of the general objects had in view by many of the parties accused this day; still there is not the least conceivable approach made thereby to the decision of the question of their guilt or innocence on the particular subject-matter charged by the present indictment. Associations are not to be condemned which seek to concentrate public opinion, and thus obtain common benefits and blessings. Governments are naturally, perhaps necessarily, quiescent; they are repugnant to change, and adverse to popular movements; and it requires very great efforts, and very great concentration of opinion, to obtain from government that which, when it is obtained, all parties regard as a benefit and improvement. It is by that means that the wisest reforms have been effected, the grandest triumphs in humanity have

been accomplished, and the wisest projects that ever entered the human mind have been gained."

After denouncing the nature of the charge, the mass of parchment, and volumes of evidence, and distinguishing the cases of Hunt, of O'Connor, and Vincent, on which the Attorney-General had relied, Mr. Whiteside, with a persuasive simplicity almost quaint in its terms, thus stated the real intent of his client. "The object of Mr. Duffy is to accomplish the repeal of a certain act of parliament, called the Act of Union, the 40 Geo. 3. The object he had and has in view is perfectly legal. No parliament can make a law that another parliament cannot unmake. The legislature of one period cannot bind or fetter the legislature of another — if so, absurd and cruel laws would become perpetual. For a legal object vast meetings have been held, and I care not for the words in this indictment, that there was an 'exhibition of physical force;' that language is not sensible — it is not explained — there is nothing in it to lead the understanding to what it emphatically means. I have quoted to you already the words of an eminent judge, who said, 'God be thanked! it never has been questioned that the right of the people of England to petition is their ancient, undoubted, unquestionable privilege.' I denounce the monstrous proposition laid down by the Attorney-General, that the more profound the tranquillity of these meetings — the greater the peace — the more perfect the order — the greater is their illegality; the greater the determination not to violate the law, the more incontestible is the proof of conspiracy."

He then discussed the law authorities cited, and described the large assemblages in England that had not been considered illegal, for releasing the Dorchester labourers; and the *hosts of King Richard* (Oastler) in that happy Yorkshire with which, as member for Ripon, the Attorney-General was connected. He pointed to the meetings in Ulster, where the men of the north assembled in border fashion. "I know that you, Gentlemen, will not act on that left-handed principle: that you will not say the men of the north may meet to express their sentiments and opinions, but the men of the south shall not do the same."

He judiciously took the evidence *en masse*, and enlarged on the peaceable character of the monster meetings. "No alarm was felt by any rational man in the community, for no injury was any where offered to life, character, or property. Indeed, Gentlemen, you have had this fact demonstrated even on the evidence of the Crown themselves. From east to west, in no single instance was there an infraction of the law — of good order or decorum — no exhibition of arms of any kind. No violence — no intimidation — no alarm — no terror — in no instance was one man injured or insulted by another — the people went by masses to those meetings — men, women, and children, and so admirable was their conduct and their arrangements, that not even an accident occurred. Our meetings were peaceable, orderly, and legal. But I forgot that, in saying this, I am uttering my own condemnation, for the monstrous proposition for which the Attorney-General is contending is, that the more peaceable, the more orderly, the more decorous were the meetings, the more deserving are they of reprehension; and the more eloquently it is attested that their objects and purposes are wicked and treasonable [*laughter*]. The fact is, our peaceable demeanour is nothing more or less than an evidence of the atrocity of our fell intent" [*laughter*].

Good as his legal argument had been, the banter was still better than the law. "It was sought to be proved that the people marched to those meetings in military array. But when a witness was produced to prove the fact, he was asked did they keep the step, and he said no; and indeed I defy any man to keep the step to such music as is played by the temperance bands [*laughter*]; and because the people did not march with regularity, oh, says the Attorney-General, that's rank sedition [*laughter*]. He hears some attempt made by a parcel of boys in the country to play some tune, and up he starts, and says that's rank treason. They don't play party tunes, however, these temperance bands; no, they are not like the music—the good and loyal music—played by the bands in the north of Ireland. Oh, dear, not at all. I'll tell you the music they play there, 'The Protestant Boys will carry the Day,' 'The Boyne Water,' and oh, the croppies

lie down, of course, 'Down, down, Croppies lie down.' These are the loyal tunes in the north, they despise all others in the world, and many a broken head, and black eye, and sore arm, has resulted from not joining with the loyal bands who play those loyal tunes. But they don't play 'God save the Queen' there at all; and because the temperance bands play it, oh, says the Attorney-General, that's rank treason [*great laughter*]. Why, I tell you what, Gentlemen, I never heard such music as the temperance bands play. I defy any man but a policeman to march to it. I heard one the other day coming from Mr. Purcell's, and I could have sincerely wished it any where else at the time. Ah, but because the poor fellows who compose the temperance bands through the country don't go to the public-house now at night, get drunk and break each others' heads, as heretofore — because they don't do that, but indulge in playing their musical instruments, why, it is said by the Attorney-General — it is distorted by a supple understanding — it is twisted into a foul and rank conspiracy. Well, I think the charge was not far wide of the mark, for I never heard of a fouler or a darker conspiracy — to do what though? — to murder harmony."

Dexterously resuming a tone of seriousness, the facetious advocate excused the language of O'Connell to Lord Beaumont by the vituperation which that noblemen had commenced, saying that he despised him as the reptile that crawled in the dust. "Much had been said about the use of the word 'foreigner' by Mr. O'Connell. Let it be remembered he had legal authority for the use of the word. In the case of Mahony *v.* Ashley, 3rd Barnewall and Adolphus, p. 482., Ireland was solemnly decided to be a foreign country. With regard to the language that had been used by Mr. O'Connell respecting Sir Robert Peel and the Duke of Wellington, it is purely personal matter; and when he spoke of having more physical force than had been present at Waterloo, it was a mere boastful expression of pride, for the purpose of showing that, as large meetings at Hillsborough and in England had marched shoulder to shoulder to accomplish their object, so those meetings of equal numbers must have their complaints discussed. I submit that Mr. O'Connell's real object was to discuss the

question of the repeal of the union, and no more. It is insinuated that those large meetings were calculated to excite discontent, but the kind of discontent is not stated. Many men are discontented, who are not conspirators. A hungry man is discontented; Cicero, with all his eloquence, could not make him otherwise. The advocates for the abolition of slavery were discontented. They said the law of slavery was against the law of God; and but for that discontent slavery might still remain a blot on English humanity, braving the vengeance of heaven itself. Therefore it is not a crime to be discontented with any law, and discontent does not make my client a conspirator. I take it, the word 'discontent' may be better understood by coupling it with the word 'disaffection.' It is not said to be disaffection against Her Majesty, or the forms of the constitution. No such thing. All that has been said in that indictment about disaffection and disloyalty only applies to an effort not to do away with the House of Commons, but to restore it; not to abolish the House of Peers, but to bring it back to where its presence is so desirable; not to limit the prerogative of the Crown, but, perhaps improperly, to extend its privileges. O'Connell found that popular strength, popular organisation, were the only elements on which we could reckon, and that the claims which were denied to justice were granted to the moral, the peaceable, but the formidable concentration of popular opinion. What is the history of Ireland for the last eighty years but a series of societies, associations, and clubs, for the attainment of one object or another? It is a very questionable doctrine, indeed, whether political rights and privileges are only to be granted when it is necessary to concede them for the purpose of checking discontent, and to teach that great but painful secret, to rely on popular organisation and that every thing will be granted, but that without it every thing would be denied."

Mr. Whiteside then rapidly traced the state of the country since 1760, and enforced the lesson taught in 1782 and 1829, that, "if they were organised by peaceful agitation, they might be victorious, almost over the conscience of the sovereign, the wishes of the English people, and the inclination of a British parliament." To relieve the solemnity of

these great moral and political truths, the persuasive orator took care to agitate the mercurial temperament of his audience with flashes of merriment. His comments on the cards of admittance breathe the genuine spirit of Irish wit and humour: — "I approach the interpretation of this card with fear and trembling. In one corner of it I find a likeness (faithful, I am to presume) of a celebrated Irish legislator, who rejoiced in the appellation of Ollam Fodlha. I confess with shame my utter incompetency to treat of the merits of this gentleman; but my Lord Chief Justice, who is deeply read in Irish lore, is conversant, no doubt, with his writings, and will understand the principles of law which have been propounded by this illustrious Solon. He, Gentlemen, is the best judge of what then was seditious, unlawful, and rebellious, in putting the head of Ollam Fodlha on the card. In that case I have to tell you, Gentlemen, that the judges on the bench are a party to the conspiracy. If you look into the hall of the courts, a place where you come to seek for justice, and where it is to be presumed it may be had inside, I say the founders of this institution have had the hardihood to place the head of Ollam Fodlha in a niche there. You will give all the value of a purity of intention to the people who thought Ollam Fodlha ought to be a model of uprightness and justice, whilst you must brand as a conspirator the man who puts that name on a card. Here is a name that I confess puzzles me a little, and one in reference to which I must certainly apply to Judge Burton for assistance. It is the name of the gentleman called Dathy. Did you ever hear of such a name as Dathy? Why, the very sound of it is conspiracy. Dathy! But who he was, what his opinions or thoughts, how he conducted himself, whether in accordance with the law or against it, I can't tell; but if there was any thing particularly wicked in his conduct, how putting his name on this card makes the people who did so conspirators, I leave for the learned judge to explain it to you. All I know about the gentleman is, that I am assured by my friend Mr. Moore here, he was a Pagan, and died at the foot of the Alps from a flash of lightning. But the defendants go forth and put two other names on their cards, and what names are

those? The names of Grattan and Flood. Men whose names would go down to posterity — whose memory would be handed down from generation to generation as long as Ireland lasted; but how would those names be handed down? Was it as men who struck down the monarchy, and abolished the constitution of the realm, — who, by their fierce spirit and force of arms, endangered them? No, but as the men, to one of whom even the Irish Protestant parliament had voted no less a sum of money than 100,000*l.* for his exertions in the cause of his country; as two peaceable men, who had by their persuasive and eloquent tongues accomplished more than ever man accomplished, — the two men to whom the world looked back with admiration, and respect, and esteem. And is it come to this in Ireland, that an Irish jury are called on to pronounce men as a band of conspirators, because they put the names, the immortal names, of Flood and Grattan on their cards? If such be the case, I say it here, and I say it emphatically, that the answer will be found enshrined in the hearts of an Irish jury."

When their muscles had been sufficiently composed, Mr. Henn having read an address to the people of Ireland, Mr. Whiteside wound up his defence of the agitators for repeal with the following noble eulogy on Ireland and its people: —

"Gentlemen of the Jury, the Attorney-General deprecated this agitation on the repeal of the Union. He told you that at the time of the Union there was a fixed settlement of the constitutional relations of the two countries.

"Gentlemen of the Jury, the Irish people, or a large mass of them, are of opinion that they labour under serious grievances, that there are reasons why they should seek for a repeal of the union, and that you ought not to condemn them on that ground. The universal people of Ireland look to the composition of the government, — they see it composed, I must say, of honourable, enlightened, and excellent men, but they see amongst the members of that government no individual connected with Ireland to represent the wants, the wishes, and the grievances of any section of the people. Of self-legislation the Irish are deprived; for self-government it would seem, they are incompetent. It is a matter no less

of surprise than of concern, that the country which produced a Burke, the teacher of statesmen, the saviour of states, cannot now furnish a single individual qualified to share in the administration of the affairs of his native country. He is but a poor statesman who thinks the pride of a sensitive people can be wounded with impunity. You may say, Gentlemen, and say with truth, that it is a matter of small moment who the individuals may be who compose the ministry of the day, provided the people are prosperous, contented, and happy? But are the people of Ireland contented, prosperous, and happy? Alas! a large portion of our countrymen are unhappy, discontented, destitute. Pressed down by poverty, they look around for the cause of their misfortunes; they behold a country blessed by Providence with the means of wealth. The strong man pines for the daily wages of a sixpence, he strives with gaunt famine in the midst of fields teeming with fertility and plenty. Is he seditious if he exclaims, in the language of indignant remonstrance, that he thinks a native parliament would give him the means of subsistence? Is it criminal for him to wish for the means of life? Is he seditious if, knowing that his single voice would be unheeded as the idle wind, he joins with other men wretched as himself in a declaration of their common wants, their common grievances, and their common sufferings. Is he, or are they, conspirators, if they think a local parliament might perhaps give them those blessings for which they sigh. They think, perhaps erroneously, that a resident aristocracy and a resident gentry would prove the source of industry and the means of wealth — they conclude, rashly perhaps, that it is not morally right, millions should be drained annually from the soil of Ireland by those whose tastes are too fastidious to permit them to spend one hour among the people who labour to support their extravagance or their necessities? They say, by the evidence of the senses, they know the value of a resident peerage and gentry, by the happy results which flow from such a residence wherever it exists. They see their aristocracy absentees — the mischief daily and hourly increasing, — they think perchance a native parliament might induce them to return, — therefore

of the union they demand a repeal; are they conspirators because they do so? They know, and true it is, that the beauties of Ireland, if now she has any, are not sufficient to induce her nobility or her gentry to reside. What are her rare beauties compared with the fascinations of the Imperial Senate, or the glittering splendour of a Court? Patriotism is a homely virtue, and can scarce thrive by absence, by an education, by a residence, by tastes, by feelings, by associations, which teach Irishmen a dislike, not unmingled with disdain, for their native country. They see and they believe that wealth is hourly diminishing in the country before them; they think there is a gloomy prospect and little hope. They look to their stately metropolis, they see what a quick and sensitive people cannot shut their eyes to, — the houses of their nobility converted into boarding schools or barracks, their Stamp-office abolished; their Linen Hall waste; their Exchange silent; their University deserted; their Custom House almost a Poor House; and not long since, they read a debate, got up by the economists, as to the prudence of removing the broken-down Irish pensioners from Kilmainham to Chelsea, to effect a little saving, careless of the feelings, the associations, the joys, or the griefs of the poor old Irish soldiers, who had bravely served their country. That cruelty was prevented by an exhibition of something like national spirit and national indignation. They see daily the expenditure of every shilling withdrawn from the poorer to the richer country, on the ground of the application of the hard rules of political economy, or the unbending principles of imperial centralisation. They behold the Senate House of Ireland — the Union has improved it into a Bank! That magnificent structure, within whose walls the voice of eloquence was heard, stands a monument of past greatness and present degradation. The glorious labours of our gifted countrymen within those walls are not forgotten, — the works of the understanding do not quickly perish. The verses of Homer have lived for twenty-four hundred years, and more, without the loss of a syllable or letter, while cities, and temples, and palaces have fallen. The eloquence of Greece tells of the genius of her sons, and the freedom it produced;

and we forget her ruin in the recollection of her greatness. Nor can we read even now, without emotion, the exalted sentiments of her inspired sons, poured forth in their exquisite language, to save the expiring liberties of their country. Perhaps their genius had a resurrectionary power, and in later days quickened a degenerate posterity from the lethargy of slavery into the activity of freedom. We, too, in better times, have had amongst us men, who approached the greatness of antiquity; the imperishable records of their eloquence may keep alive in our hearts a zeal for freedom and a love of country. The comprehensive genius of Flood, — the more than mortal energy of Grattan, — the splendour of Bushe, — the wisdom of Saurin, — the learning of Ball, — the noble simplicity of Burrowes, — the Demosthenic fire of Plunket,— and the eloquence of Curran, rushing from the heart, which will sound in the ears of his countrymen for ever, all, all failed to save the ancient constitution of Ireland; for learning, eloquence, genius, lost their power over the souls of men. With a great exception, these our distinguished countrymen have passed away; but their memorials cannot perish with them while the language lasts; their eloquence lives, and their names will be remembered by a grateful posterity, while genius is honoured or patriotism revered. Lastly, on the subject of the Union. The Irish people say, the imperial parliament has not attended to their peculiar wants, nor redressed their peculiar grievances: — our character, say they, has been misunderstood, and sometimes slandered; our faults have been magnified into vices, and the crimes of a few have been visited on the nation. The Irish — the mere Irish — have been derided as creatures of impulse, without settled understandings, a reasoning power, a moral sense. They have their faults, I grieve to say it, but their faults are redeemed by splendid virtues — their sympathies are warm, their affections are generous, their hearts are brave. They have rushed into this agitation with ardour: it is their nature, when they feel strongly, to act boldly, to speak passionately. — Ascribe their excesses to their enthusiasm, and forgive. Recollect that same enthusiasm has borne them triumphant over fields of peril and glory, —

impelled them to shed their dearest blood, and spend their gallant lives in defence of the liberties of England. The broken chivalry of France attest the value of that fiery enthusiasm, and marks its power. Nor is their high spirit useful only in the storm of battle; in their hours of adversity it cheers their almost broken hearts, — lightens their load of misery, well nigh insupportable, — sweetens that bitter cup of poverty which thousands of your countrymen are doomed to drink. What is there truly great which enthusiasm has not won for man? The glorious works of art, the immortal productions of the understanding, the incredible labours of heroes and patriots for the salvation of the liberties of mankind, have been prompted by enthusiasm and by little else. Cold and dull were our existence here below, unless the deep passions of the soul, stirred by enthusiasm, were sometimes summoned into action for great and noble purposes — the overwhelming of vice, wickedness, and tyranny; the securing and the spreading the world's virtue, the world's happiness, the world's freedom. The hand of Omnipotence, by whose touch this island started into existence, amidst the waters which surround it, stamped upon its people noble qualities of the intellect and heart. Directed to the wise purposes for which Heaven designed them, they will yet redeem, regenerate, and exalt this country."

The whole court rung with applause, in which the bar joined as warmly as the unprofessional audience; and on his entering court next morning, there having been an adjournment at this part of his oration, welcomed him with renewed plaudits.

Mr. Whiteside resumed his masterly defence in that subdued and quiet tone which characterised the beginning of his speech the day before, justified the establishment of Arbitration Courts from Paley and Blackstone, and put an ingenious but false gloss on the proceedings of the Association, that they only recommended parties to consent to submit their differences to arbitration, and wished to walk in the ancient footsteps of the constitution.

Mr. Whiteside had too much respect for himself to attempt to justify the language that had been used in reference to the

Queen's speech. "It may have occurred that unseemly language was used in relation to that document, but I beg of you to bear in mind the distinction which was always made between it, as not the act of Her Majesty, but that of ministers. The next charge brought against the Traversers is that of endeavouring to excite disaffection and discontent amongst her Majesty's subjects serving in the army. It is a singular charge, and peculiarly so from this remarkable circumstance, that it is not asserted that the Traversers undertook or conceived any project for the purpose of exciting mutiny amongst the troops, or encouraging the practice of desertion."

Having discussed at length, perhaps too diffusively, the objections urged by Grattan and Saurin against the Union, the dexterous apologist noticed O'Connell's startling paradox, that the Queen might summon a parliament by virtue of her royal prerogative. "He has been guilty of the monstrous proceeding of extending the royal prerogative. The Attorney-General, the legal champion of the Crown, charges it as a crime against Mr. O'Connell that he has said the Queen has a larger, wider, and more extended prerogative than Her Majesty possesses. Where is the authority in which it is laid down that the man who propounded such a proposition is to be charged as a conspirator? Mr. O'Connell's argument was this, that the sovereign has still the power to create boroughs in England. Chitty, in his work on the prerogatives of the Crown, enters into that question, and says that there was nothing to take away the prerogatives of the Crown in that respect."

It was put as an extreme case; but the alleged conspirators looked to parliament for relief, else their meetings and petitions would have been useless. "They spoke openly and in day-light, those dark projects, those treasonable designs, those hidden contrivances; their rules are given to the public — they employed the printer of the Crown to print them, and they declared their object to be the peaceable organisation of the people — to concentrate popular opinion, and carry out the objects they had in view, and that was a legitimate and proper object. I retort on the Attorney-General the argument he used, that if it were mischievous in those

defendants, or any of them, to spread poison through the land, it is more mischievous in the champion of the government, the sentinel of the state, not at once to come forward and stop the mischief when it might be stopped."

Their sudden start to arms on the Clontarf meeting being announced was thus cleverly bantered. "The commander-in-chief receives his order, and prepares for battle. The cannon is loaded — the bayonet is fixed — the cavalry mount, and forth marches our victorious army, in all 'the pride, and pomp, and circumstance' of glorious war. It was a glorious sight to see. The advanced guard, by a brisk movement, pushed on and seized Aldborough-house. The light infantry, protected by cavalry, rush forward — the army are placed in position. The Pidgeon-house bristled with cannon, and looked awful, and the police skirmished, and the commander-in-chief — what did he? It is stated that Sir Edward Blakeney, at one o'clock, rode down to inspect the troops — approved of what was done — rode home and dined! And if he does not get a peerage for the happy deeds he did that day, justice will not be done to Ireland. Such a triumph was never achieved since the renowned days of Irish history, when Brian Boroihme buckled on his mighty sword and smote the Danes. To be serious, was that a wise, consistent, judicious course of policy to make the law understood, respected, and obeyed? Which are the most blameable — the people for holding those meetings that they did not see denounced or put down by the law — or the ministry that stood by and witnessed the folly and knew of the madness that allowed the mischief to prevail and spread over the country, until it was to burst forth like a fiery volcano, and sweep the country in a torrent of devastation? These meetings, say the counsel for the Crown, were full of danger, fatal to social order, pretexts for rebellion — they were unconstitutional and illegal — the speakers who addressed them were trumpets of sedition, and the speeches made were overt acts to prove the great joint crime; each and all of these mighty assemblages were overt acts of a conspiracy — each and all of the speeches were uttered in furtherance of the one united comprehensive plan; each of the meetings of hundreds of

thousands of conspirators was full of danger — they excited the apathetic, inflamed the ardent, alarmed the timorous, and lighted throughout the kingdom a flame of discord — each monster-meeting was an object of dismay and terror — expected by the government to burst forth, volcano-like, and spread destruction in its fiery course; the publications of the press were each and all, as we have proved, incentives to sedition and stimulants of rebellion — and each of these publications when written was seditious, in prosecuting a base and wicked object. Gentlemen, reflect upon these arguments — weigh them well, and then ask your honest understandings can you adopt them? Will you give a political verdict to save the government from the consequences of past neglect?"

After these general arguments Mr. Whiteside distinguished the case of his client, as the proprietor of a weekly journal, arraigned, not for assailing private character, but for advocating a great public question. "If a poetic youth within the walls of a college sends a clever song to the compositor to fill a corner, even the poetry, however harmonious, the Attorney-General intermixes with the horrible prose of an indictment."

Having thus frankly given up what was indefensible, and said all that could be said for every passage that admitted of excuse, or apology, or explanation, the argumentative orator thrilled the hearts of his hearers with a sublime peroration on the right and benefit of full and free political discussion.

How superior to the noisy, gorgeous fireworks of Sheil is the calm planetary light of these eloquent philosophical truths.

"Gentlemen, the whole case is now before you, and is emphatically for your decision. You have seen the many instances where the crime of conspiracy was attempted to be fastened on Englishmen, in which English juries refused to convict. In that terrible book containing the State Trials of England, where the real history of that country is written, there are many instances of truth stifled, justice scoffed, and innocence struck down. On the other hand, there are memorable examples of victims rescued from oppression by the honesty and courage of British juries. Hardy, who dis-

cussed the great question of Parliamentary Reform, thus was saved; thus was rescued Horne Tooke: with their conviction freedom of discussion might have perished. At an earlier period still; in the days of the second James, when the seven Bishops were accused of conspiracy for asserting the rights of Englishmen, a jury delivered a verdict of acquittal, and the shouts of joy with which it was received proclaimed your freedom. Even in the days of Cromwell, after he had waded through slaughter to a throne, and under the sacred names of Liberty and Religion trampled upon both, the tyrant found the virtue of a jury beyond his power, — the forms of justice he dare not abolish, while an Englishman lived; and we have it upon record that when, in the plenitude of his power, he prosecuted for a libel upon himself, there were twelve honest men found, who had the courage to pronounce a verdict of not guilty; thus proving, — I quote the words of a patriot lawyer, who, in reference to that immortal precedent, exclaimed, — 'When all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors.' Gentlemen, the true object of this prosecution is to put down the freedom of discussion of a great public question: viewed in this light, all other considerations sink into insignificance. Its importance becomes vast indeed. A nation's rights are involved in the issue; a nation's liberties are at stake; what won, what preserves, the precious privileges you possess, — the exercise of the right of political discussion, — free, untrammelled, bold. The laws which wisdom framed, the institutions struck out by patriotism, learning, or genius, — can they preserve the springs of freedom fresh and pure? — No; destroy the right of free discussion, and you dry up the sources of your freedom. By the same means by which your liberties were won, — can they be increased or defended. Quarrel not with the partial evils free discussion creates, nor seek to contract the enjoyment of that greatest privilege within the narrow limits timid men prescribe. With the passing mischiefs of its extravagance, contrast the prodigious blessings it has heaped on man. Free discussion aroused the human mind from the torpor of ages; taught it to think, and shook the thrones of ignorance and

darkness. Free discussion gave to Europe the Reformation, which I have been taught to believe the mightiest event in the history of the human race; illuminated the world with the radiant light of spiritual truth,—may it shine with steady and increasing splendour! Free discussion gave to England the Revolution, abolished tyranny, swept away the monstrous abuses it rears, and established the liberties under which we live. Free discussion, since that glorious epoch, has not only preserved but purified our constitution, reformed our laws, reduced our punishments, and extended its wholesome influence to every portion of our political system. The spirit of inquiry it creates has revealed the secrets of nature, explained the wonders of creation, taught the knowledge of the stupendous works of God. Arts, science, civilisation, freedom, pure religion, are its noble realities. Would you undo the labours of science, extinguish literature, stop the efforts of genius, restore ignorance, bigotry, barbarism; then put down free discussion, and you have accomplished all. Savage conquerors, in the blindness of their ignorance, have scattered and destroyed the intellectual treasures of a great antiquity; those who make war on the sacred right of free discussion, without their ignorance, imitate their fury. They may check the expression of some thought, which might, if uttered, redeem the liberties or increase the happiness of man. The insidious assailants of this great prerogative of intellectual beings, by the cover under which they advance, conceal the character of their assault upon the liberties of the human race. They seem to admit the liberty to discuss, blame only its extravagance, pronounce hollow praises on the value of freedom of speech, and straightway begin a prosecution to cripple or destroy it. The open despot avows his object is to oppress or enslave; resistance is certain to encounter his tyranny, and perhaps subvert it. Not so the artful assailant of a nation's rights; he declares friendship while he wages war, and professes affection for the thing he hates. State prosecutors, if you believe them, are ever the fastest friends of freedom. They tell you peace is disturbed, order broken, by the excesses of turbulent and seditious demagogues. No doubt there might be a seeming peace —

a deathlike stillness — by repressing the feelings and passions of men. So in the fairest portions of Europe this day, there is peace and order, and submission, under paternal despotism ecclesiastical and civil. That peace springs from terror, that submission from ignorance, that silence from despair. Who dares discuss, when with discussion, and by discussion, tyranny must perish? Compare the stillness of despotism with the healthful animation, the natural warmth, the bold language, the proud bearing, which spring from freedom, and the consciousness of its possession. Which will you prefer? Insult not the dignity of manhood by supposing that contentment of the heart can exist under despotism. There may be degrees in its severity, and so degrees in the sufferings of its victims. Terrible the dangers which lurk under the calm surface of despotic power. The movements of the oppressed will at times disturb their tyrant's tranquillity, and warn him their day of vengeance, or of triumph, may be nigh. But in these happy countries the very safety of the state consists in freedom of discussion. Partial evils in all systems of political governments there must be, but their worst effects are obviated when their cause is sought for, discovered, considered, discussed. Milton has taught a great political truth in language as instructive as his sublimest verse:—'For this is not the liberty which we can hope, that no grievances ever should arise in the commonwealth; that let no man in this world expect; but when complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty obtained, that wise men look for.' Suffer the complaints of the Irish people to be freely heard, you want the power to have them speedily reformed. Their case to-day may be yours to-morrow. Preserve the right of free discussion as you would cling to life. Combat error with argument—misrepresentation by fact—falsehood with truth. 'For who knows not,' says the same great writer, 'that truth is strong, next to the Almighty; she needs no policies nor stratagems to make her victorious; these are the shifts error uses against her power.'

"If this demand for a native parliament rest on delusion, dispel that delusion by the omnipotence of truth. Why do

you love, why do other nations honour, England? Are you — are they dazzled by her naval or military glories, the splendour of her literature, her sublime discoveries in science, her boundless wealth, her almost incredible labour in every work of art and skill? — No; you love her — you cling to England because she has been for ages past the seat of free discussion, and therefore the home of rational freedom, and the hope of oppressed men throughout the world. Under the laws of England it is our happiness to live — they breathe the spirit of liberty and reason. Emulate this day the great virtues of Englishmen, their love of fairness, their immovable independence, and the sense of justice rooted in their nature. These are the virtues which qualify jurors to decide the rights of their fellow men; deserted by these, of what avail is the tribunal of a jury! It is worthless as the human body when the living soul has fled. Prove to the accused, from whom, perchance, you widely differ in opinion, whose liberties and fortunes are in your hands, that you are there, not to persecute, but to save. Believe me you will not secure the true interests of England by leaning too severely on your countrymen. They say to their English brethren, and with truth, we have been at your side wherever danger was to be faced, or honour won. The scorching sun of the East, and the pestilence of the West, we have endured to spread your commerce, to extend your empire, to uphold your glory. The bones of our countrymen whitened the fields of Portugal, of Spain, of France; fighting your battles they fell; in a nobler cause they could not. We have helped to gather your imperishable laurels — we have helped to win your immortal triumphs: now in time of peace we ask you to restore that parliament you planted here with your laws and language, uprooted in a dismal period of our history, in the moment of our terror, our divisions, and weakness — it may be, our crime. Re-establish the Commons on the broad foundation of the people's choice; replace the peerage, the Corinthian pillars of the capitol, secured and adorned with the strength and splendour of the Crown; and let the monarch of England, as in ages past, rule a brilliant and united empire in solidity, magnificence, and power.

"When the privileges of the English parliament were invaded, that people took the field, struck down the monarchy, and dragged the sovereign to the block. We shall not be ready to imitate the English precedent; we shall revere the throne, while we struggle for a parliament, its surest bulwark. That institution you prize so highly, which fosters your wealth, adds to your prosperity, and guards your freedom, was ours for six hundred years. Restore the blessing, and we shall be content. This prosecution is not essential for the maintenance of the authority and prerogative of the Crown. Our gracious sovereign needs not state prosecutions to secure her prerogatives or preserve her power. She has the unbought loyalty of a chivalrous and gallant people. The arm of authority she requires not to raise. The glory of her gentle reign will be, that she will have ruled, not by the sword, but by the affections; that the true source of her power has been, not in the terrors of the law, but in the hearts of her people.

"Gentlemen, your patience must be exhausted. If I have spoken in any degree suitably to the dignity of this great subject, I have spoken as I could have wished; but if, as you may think, deficiently, I have spoken as I could. Do, you, from what has been said, and from the better arguments which may have been omitted, to be suggested by your manly understandings and your honest hearts, give a verdict consistent with justice, yet leaning to liberty; dictated by truth, yet inclining to the side of accused men; struggling against the weight, and power, and influence of the Crown, against prejudice more overwhelming still; a verdict to be applauded, not by a party, but by the impartial monitor within your breasts; a verdict becoming the high spirit of Irish gentlemen, and worthy the intrepid guardians of the rights and liberties of a free people."

When Mr. Whiteside, says one of the reports, concluded his magnificent speech, which was listened to with intense attention, he sat down amidst a burst of applause, which the presence of the Court could not repress. The Court then retired, and on resuming at half-past two, Mr. M'Donogh, *longo proximus intervallo*, addressed the jury on behalf of

Mr. Barrett, the proprietor of the *Pilot* newspaper. He complained of the vast variety of petty and isolated things heaped, not even grouped together, to make out this charge — "this baseless fabric of a vision!" He read from the files of the newspaper, long passages, all breathing loyalty to the throne, and attachment to the sovereign, inculcating obedience to the laws and observance of peace and order.

"Policemen prone to suspicion, it was their trade, were produced to mutilate and not report the beautiful speeches of O'Connell. The peasant, who talked of knowing foreigners by the curl of their lip and moustache, was merely quizzing Captain Despard. You may have heard, I dare say, of a Mr. Trevelyan, a writer in one of the morning papers, who, while travelling in a hackney car, asked the driver what the letters 'G. P. O.' meant, which he observed on the milestones? The reply was, 'God Preserve O'Connell.' Now he was humbugging just as the man was humbugging Captain Despard. With regard to his client, speaking of good Queen Bess as a profligate old Harridan, men adapted their language to their auditory. It might have been more courtly to speak of Queen Elizabeth as 'the fair vestal throned in the West,' — but he is not a conspirator because he has read history."

Mr. M'Donogh made one slip in the course of his address, a mere *lapsus linguæ*, from which he recovered himself with much dexterity. "He had heard the Queen's speech with profound contempt — [*much laughter*] — with profound respect and veneration. He was sure his learned friends would admit that that was a mere mistake; and when he committed that mistake, speaking before them in the sincerity of his heart, would they convict Mr. Barrett for any similar mistake into which he might have inadvertently fallen?"

He concluded his clever remarks in a tone of propriety and good feeling. "Mine shall not be the hand to draw aside the curtain which shrouds the future destinies of Ireland; but this at least I may be permitted legitimately to observe, that if you shall not be thoroughly satisfied with the case made for the Crown, if you entertain any reasonable doubts of this alleged conspiracy, you will, by finding a verdict of acquittal, do more to attach the people of this country to the admini-

stration of the law than any event which has occurred for centuries of time. Should the holding of a triennial parliament in Dublin be compatible with the true interests of the empire, a British statesman may possibly entertain the subject; but whatever may be the result of speculations such as these, I think I cannot better or more becomingly conclude my observations to you, than by humbly imploring that Providence, which has been so long the guardian of the British Isles, to direct your judgments, and to lead your minds to a just and merciful conclusion."

Mr. Henn, whose legal acumen had been called for at the eleventh hour, then addressed to the jury, ostensibly for Mr. Steele, a most subtle and adroit argument, a series of clever enthymemes, a perfect *sorites*. He announced his own honest opinion that a repeal of the union would be fraught with mischief to England and ruin to Ireland. "Though I know there are hundreds, thousands, millions of my countrymen who honestly entertain a different opinion, and though I see many amongst them much more competent to form an opinion than I am, I claim the right to announce that opinion — I claim the right to enforce that opinion by all legitimate means, and by all arguments that I could use, to induce others to adopt it — I claim the right, if I feel that there is a great body of persons coinciding with me in that opinion, respectable from their intelligence, and respectable from their numbers — I claim the right to make known to the government of the day, and to the minister who holds the reins of government, that fact. Gentlemen of the Jury, the right I claim, I feel I am bound to concede. Nay more, on the part of the Traverser for whom I address you, I claim that right for him; and I assert, Gentlemen of the Jury, that the Traverser here, honestly and conscientiously believing that a repeal of the union is essential for the well-being of this country, has a right to entertain — has a right to announce — has a right to convince others, that that opinion is right — has a right to collect the sense of the nation, and has a right to collect that in such a manner as will apprise the minister of the day what are the real sentiments of the people that are governed by him."

Mr. Henn deduced the law from a simple proposition, that a conspiracy to do a criminal act is itself a crime, and raised on this foundation a most artful hypothesis. "If you have clear and satisfactory proof of persons conspiring to do an illegal act, the act of each done in furtherance of that common object, is not only evidence against the others, but in point of law the act of the others. I admit that at the outset. I admit it freely; it is undoubted law. And if men, therefore, conspire to do an illegal act, if men conspire, for instance, to waylay and beat another, and if one of them in furtherance of that object strikes a deadly blow, the others would be answerable for the consequences. But, Gentlemen of the Jury, on the other hand it is quite clear, that if men combine for the purpose of doing a legal act, and, in the prosecution of that common design, one of them transgresses the law, he is answerable for his own transgression; but he cannot implicate the innocent in his guilt."

The wary pleader drew pointed attention to the charge in the indictment, and first hit the blot of the defective allegations. "Have you any doubt at all that the common object was to procure a repeal of the union? That, Gentlemen of the Jury, is not charged; it is not charged here that they conspired to procure a repeal of the union: but that is the true offence. I will tell you why it is not charged, because if it had been charged, the indictment would not stand one moment: you would be saved the trouble of trying it—their lordships would have held it to be bad—a demurrer would have been laid, and you would have been saved the trouble of trying it. But see, now, Gentlemen of the Jury, what is the nature of the charge. Is it not preposterous, is it not absurd, is it not so vague and indefinite, as to render it unsafe for any jury to act upon a charge so vague as that, or for any court to say that that constitutes a legal offence? If there was nothing more in this indictment than that, would the case last five minutes? A conspiracy to raise and create discontent and disaffection! What is the meaning of that charge? Why, if that was to be supported in a court of law, I would ask you is there not an end to all discussion and improvement, and all amelioration of our laws? Is there not

an end to all chance of getting rid of bad laws, and of getting good laws? How is it possible to argue any question, or to reason with any reasoning man, to satisfy him that an existing law is bad, without exciting discontent? How is it possible to reason with any men, and convince them that it is essential to their well-being that a new law should be introduced, without exciting discontent? And am I to be gravely told, and will the Crown prosecutors here gravely assert, that men are to be put on their trials, and charged with a criminal offence, because they have used arguments in support of a legal object they have in view. But I am told it is coupled with disaffection. What is the disaffection? 'Discontent and disaffection amongst the subjects of our said Lady the Queen.' Why, was there ever a more vague charge? Disaffection to whom or to what? Is the disaffection to the Queen, or the government, or the constitution? I am ready to admit that to conspire to create disaffection to the Queen is a criminal offence; but, I ask you, Gentlemen, could you convict those Traversers for that? Is it disaffection to the government? What means the government? If the ministry of the day, the charge is idle and absurd. There can be no such thing as disaffection to the ministry. God forbid I should live to see the day when it would be said to be a criminal offence to excite disaffection against the ministry. Is it the government in another sense? Does the government mean the constitution by law established? Could you convict them for that? What means the constitution? It is the government of the realm by the king, lords, and commons; but it is perfectly consistent with that constitution that there may be a separate parliament — that there may be independent legislatures — that there may be a house of lords and a house of commons in England, and a house of lords and a house of commons in Ireland, and one common sovereign. That was the constitution before the Act of Union incorporating the two legislatures; that act did subvert the then constitution; the repeal of that act would restore the two independent legislatures, and leave the constitution untouched. The next charge is—'and also to stir up jealousy, hatred, and ill-will between different classes of Her Majesty's subjects,

and especially to promote amongst Her Majesty's subjects in Ireland feelings of ill-will and hostility towards and against Her Majesty's subjects in England.' Gentlemen of the Jury, let us deal with that charge. It is an extraordinary charge; and it is new to me that such a charge as that can amount to the imputation of crime. They rely upon certain passages in some speeches, which they say are calculated to produce the effect; but, Gentlemen of the Jury, what were the speakers doing? They were endeavouring to convince their hearers, what they themselves conscientiously believe, that a repeal of the union would be essential to the benefit of this country; and in doing that, Gentlemen, they were justified in using all fair arguments that they could to convince them. They were justified in resorting to one of the most powerful arguments that can be urged — a reference to past history; and if the facts in history are calculated to produce such effects as those, I deplore it. But is it alleged that they falsified facts or misquoted history? Is it alleged that they misrepresented history?

"The charge of exciting disaffection in the army was supported by proof that O'Connell in one or two speeches had spoken of the army in terms of high commendation. But there were seditious publications which he would not defend, for which the authors alone should be punished. The plain, the simple, the obvious, the direct, the manly, the honest course is abandoned, and a circuitous course is taken. And, Gentlemen, it is sought now to convict one man of another's acts, and to use the acts of one as evidence against the others, arguing thus in a circle."

A terse simplicity of phrase, embodying clear logical shrewdness, characterised the whole of this remarkable address, which almost won among lawyers the palm of excellence. His lucid reasoning, and learned questioning, must have rivetted the attention of the jury. "Can you doubt that the real object was to evince to the government of the country in a manner that would bring home to their minds most clearly and satisfactorily what the sentiments of the Irish people are — the real majority of the Irish people? Do you imagine that Mr. O'Connell really

intended to march with those repeal wardens, to encounter the artillery of Great Britain? Do you think that he intended to assail the House of Commons? Do you think that he had the slightest thought to induce the minister of Great Britain to apprehend an outbreak of physical force. Gentlemen, his whole life belies the charge. The whole progress of the agitation, which had for its object the accomplishment of Catholic emancipation, proves the great and beneficial effects arising from the course which he advocates, preserving perfect peace, but at the same time making a moral demonstration, that no minister in his senses could possibly disregard. I say, Gentlemen, he has done nothing wrong — he has done nothing illegal, in ascertaining what the true opinion of the country is — that there is nothing wrong or nothing illegal in exhibiting what that opinion is — and that there is nothing wrong and nothing illegal in communicating it to the minister of the day. The next charge is, that they conspired to bring into hatred and contempt the courts by law established for the administration of justice. If you are of opinion that the object of that proceeding was to enable parties to obtain cheap justice, there is no crime committed. It is idle and absurd to say, that recommending men to submit their disputes to their fellow-men is calculated to bring into disrepute the constituted tribunals of the land. It is absurd to say that the complaint of the expense attendant on a suit in the superior courts is any thing like a crime. I am yet to learn that there is a crime in endeavouring to induce persons to withdraw the adjudication of their differences from the courts. I have myself sometimes, not often, been guilty of that offence. I have recommended men, unwisely, I admit, not to go to law, and I have recommended men more than once to submit their disputes to other tribunals than those constituted by law. I confess to you that I have been at times, in the progress of this trial, disgusted with my own profession. I feel grieved and pained when I find men of high intellectual attainments, great information, and unquestioned honour, resorting to the species of arguments I have heard urged in this case; and when I find men of that description coming down with arguments to meet every possible state of facts,

prepared to draw from the directly opposite facts the same conclusion, and to ask the jury to come to that conclusion which they wish to establish. If at any of those meetings any language calculated to lead to a breach of the peace had been used, with what triumph would it have been fastened upon? If they had heard, as at some of the meetings in England, 'Down with the Queen;' and if there had been an insult offered to the Queen's name, how properly and triumphantly would it have been relied upon as evidence of a criminal intention! But, Gentlemen, you find no such thing. You find the absence of this and the presence of directly the contrary, and yet you find the counsel for the Crown alleging that those facts equally lead to the same conclusion. If the declarations are made there is evidence of hypocrisy; if the declarations are not made there is evidence of conspiracy. I profess I don't know how a man can defend himself from an argument such as this. Why, Gentlemen, if it were not a subject too serious to be enlivened by a jest, I might appropriately introduce a speech I once heard was spoken. A learned advocate in addressing a jury upon another occasion said, 'Gentlemen of the Jury, I smell a rat; I see it brewing in the storm; but, please God, I will crush it in the bud' [*laughter*]. Gentlemen of the Jury, whether your senses of smelling are as acute as the Attorney-General's, I know not; but he expects you will give him credit for seeing it brewing in the storm, and that by your verdict you will crush it in the bud."

The concluding remarks of this able dialectician bore the same stamp of truth and power and fearlessness. "You are discharging a great and important duty: a deep interest — an interest that pervades Ireland—an interest that extends to England — an interest that stretches beyond the limits of Great Britain, and actually attracts the attention of the civilised world, is attached to this subject. There is not a state in Europe in which there are not at this day thinking men observing the proceedings here. They are watching to see whether in point of fact that freedom of discussion, on which you heard such splendid eulogiums pronounced—that freedom of discussion of which Britons have so loudly boasted, is a

reality or an unreal mockery. I have the most perfect reliance on your integrity, your honour, your intelligence, and I am convinced that you will, by your verdict, prove, that there is not on the face of this whole earth a tribunal from which the accused is so certain of justice, as a jury of Irish Protestants."

The Court broke up delighted with his acute and subtle reasoning, and in eager anticipation of the Monday, when the great leader himself, unarrayed in wig and gown, but as the man of the people, would address them. No radiant anticipation lighted up O'Connell's countenance as he rose to address an adverse tribunal; for his impulsive spirit could quicken a willing, but not subdue an adverse, audience. A plain, earnest, sincere tone of conviction — a calm defiance of the jury — an honest manner and masculine sound sense, marked the commencement of his defence — stern and simple contrasted, as in scorn, with Sheil's tropes and brilliancy.

"Gentlemen, I beg your patient attention while I show you, in as few sentences as I possibly can, and in my own plain and prosaic style, the right I have to demand from you a favourable verdict. I ask it without disrespect and without flattery — I ask it on the ground of common sense and common justice — upon these grounds I demand your favourable verdict, being thoroughly convinced that I am plainly entitled to it. I do not feel that I should have been warranted in addressing you at all after the many speeches you have already heard, and that powerful display of talent that so delighted, as well as, I trust, instructed you; but I do not stand here my own client. I have clients of infinitely more importance. My clients in this case are the Irish people — my client is Ireland — and I stand here the advocate of the rights, and liberties, and constitutional privileges of that people. My only anxiety is lest their sacred cause — their right to independent legislation — should be in the slightest degree tarnished or impeded by any thing in which I have been the instrument. I am conscious of the integrity of my purpose — I am conscious of the purity of my motives — I am conscious of the inestimable value of the object I had in

view — the repeal of the union. I own to you I cannot endure the union; it was founded upon the grossest injustice — it was based upon the grossest insult — the intolerance of Irish prosperity. This was the motive that actuated the malefactors who perpetrated that iniquity; and I have the highest authority — the ornament for many years of that bench, but now, and recently, in his honoured grave — that the motive of this proceeding was an intolerance of Irish prosperity. Nor shall I leave that on his word alone. I have other authorities for it, with which I shall trouble you in the course of as brief — for I am exceedingly anxious to make as brief — an address as I possibly can. I am not here to deny any thing I have done, or here to palliate any thing I have done. I am ready to re-assert in court all I have said, not taking upon myself the clumsy mistakes of reporters — not abiding by the fallibility that necessarily attends the reporting of speeches, and in particular where those speeches are squeezed up together, as it were, for the purposes of the newspapers. I don't hesitate to say that there are many harsh things of individuals, and clumsy jokes, that I would rather not have said, but the substance of what I have said I avow, and I am here respectfully to vindicate it; and as to all my actions, I am ready not only to avow them, but to justify them; for the entire of what I have done and said, was done and said in the performance of, to me, a sacred duty — the endeavouring to procure the restoration of the Irish parliament. You are assembled in that box to prevent justice being done to Ireland as it has been to other countries. It is quite certain there is a considerable discrepancy of opinion between you and me; there can be no doubt of that; there is a discrepancy on one subject, and one of the utmost importance — we differ as to the repeal of the union; if you had not so differed you would not be in that very box. You also differ with me on another most important subject, and that is on the subject of our religious belief. If you had been of the same faith as I, not one of you would be in that box; and these differences are, perhaps, aggravated by the fact that I am not only a Catholic who was most successful — and I can say it without boasting, for it is a part of his

tory—in putting down that Protestant ascendancy of which perhaps, you are the champions—certainly you were not the antagonists—and in establishing that religious equality against which some of you contended, and against which all of your opinions were formed. This is a disadvantage which does not terrify me from the performance of my duty. I care not what may be the effect as regards myself—I care not what punishment it may bring down—I glory in what I have done—I boast of what I did. I am ready to defend all I have succeeded in accomplishing. I know I am, Gentlemen of the Jury, in your power; but I know I am in the power of jurors of honesty and of integrity, and I appeal to you as such."

A flash of the old humour with which he used to convulse the Lower Nation, but subdued and short, enlivened the gravity of his address. "I do not wish to speak disparagingly of the Attorney-General—no man is less inclined to do so than I am; on the contrary, my lords, I admit the ingenuity with which he stated the case. I admit the talent he displayed, the industry he evinced throughout. He was eleven hours at it, eleven mortal hours!—when did he tell you of the conspiracy? 'Oh!' said he, 'wait awhile, wait till I come to the close, and when I do come to the end, go back to the beginning [*laughter*], and find out the conspiracy;' and allow me to say, that if any gentleman could have found out the conspiracy, it would have been the Attorney-General. Yes, he did take eleven hours in throwing out that garbage to the jury. I remember a case on the Munster circuit in which the celebrated Mr. Egan was engaged for the defendant. It was stated by Mr. Hoare, a gentleman of dark appearance, who made a very powerful speech on the merits of the case. Mr. Egan said, 'Oh, I will make such another.' Now, he was sure of his jury, and all he wanted was an excuse for them. 'Gentlemen of the Jury,' said he, 'surely you will not be led away by the dark oblivion of a brow' [*laughter*]. One of the counsel who sat near him said, 'Why, Egan, that is nonsense.' 'To be sure it is,' was the reply, 'but it will do for the jury' [*loud laughter*]. So the eleven hours are good enough for you. Oh! it is nonsense—it is criminal nonsense

— to call that conspiracy which takes eleven hours in the development.

"The dark rumours had come to nothing. Every one said, 'We have heard all this before. It is all old matter.' The life, they say, of an old coat is a new button! What does the evidence consist of? First, meetings — next newspapers. I ask you what could tempt me, an old lawyer, to enter publicly into a conspiracy? I boasted that I kept the public free from the meshes of the law — I say that I boasted of this. I know that I have but a short time to labour in my vocation here, and that there is an eternity on which I must soon enter. I approach that judgment which cannot be long postponed, and do you believe that under such circumstances I would be guilty of that with which I stand charged? Ah, no, you do not think I would have the cruelty, the folly, to enter into such a conspiracy. You do not believe I would have the absurdity to enter into that conspiracy. As Irish gentlemen, put your hands to your hearts, and say do you believe it? I am sure you do not. Pardon me, if I have made too free, but I will say there is not one of you can spell a conspiracy out of all that was laid before you during the eleven hours in which the Attorney-General was ringing changes on that word, going backwards and forwards from meeting to meeting, and from policeman to policeman, in coloured clothes and out of coloured clothes — not one of you can believe that any such conspiracy ever existed. I proclaim, firmly, you cannot believe it. I know your verdict may imprison me, and shorten the few days yet before me, but it cannot take from me the consciousness that I am entitled to your acquittal, and that there is not a man of you who would pronounce a verdict of guilty, who would not himself be conscious of its being a mistake. Perhaps what the Attorney-General wants you to believe is, that I was a conspirator without knowing it — that I fell into a conspiracy as a man falls into a pit without knowing it was there. This was in the open day. I saw the pitfall. Every thing was clear, and if you believe any thing against me you must believe I was a conspirator without knowing it — a conspirator ignorant of conspiracy — and that is the question you are selected to try. In the

technicality of law, I would say that even in that case there could be no guilt, for there can be no guilt without guilty intention; but I scorn to make points of law — as a matter of common sense this is plain and obvious, and I trust I may say irresistible. Oh! this is a curious invention — this sweeping conspiracy of the Attorney-General.

"Why was not Wilberforce charged with conspiracy because he sought to put an end to the thraldom of the slave. Oh! how would they have stared, if this doctrine of conspiracy had been sooner invented. The slave would have been bound for ever, whilst somebody with milk-and-water accents, with mild tea-table talk, endeavoured to persuade ministers to abolish it! Oh! Gentlemen, it was the calling down of public indignation — the rousing of all that was virtuous in the public mind, and that heaven-descended spirit of persevering, open, bold humanity, that shook off the fetters of the negro, and re-established him in freedom. What would become of reform in parliament if such demonstrations of public opinion had not been made? Was there a man among the Whig aristocracy that did not approve of it, did not join in such demonstrations? Were there not great meetings held? You have heard of the Birmingham meetings, and hundreds of other meetings, for the purpose of obtaining parliamentary reform.

"At the time of the agitation for Catholic emancipation, the most eminent lawyer of that period, Mr. Saurin, thought the law was violated by that agitation. He prosecuted some of those engaged in it. He was defeated in one trial, and he succeeded in another. But would he ever dream — would he, in the very wildness of imagination, think of turning the efforts made for Catholic emancipation into a conspiracy? I was prosecuted for words spoken. My friend on my left (Mr. Sheil) was prosecuted for words spoken; but the Attorney-General never thought of violating the constitution by turning those efforts for emancipation into a conspiracy. Yet had not we our county meetings — our simultaneous meetings? Did not, on the 30th of January, 1829, all the Catholics of all the parishes in Ireland meet? Was that evidence of a conspiracy? Upon one day every parish in

Ireland met. On one day they proclaimed a determination to persevere till they obtained religious equality. No man ever dreamed of turning that into a conspiracy. It was reserved for our time — it was reserved for our day — it was reserved for the glory of the present Attorney-General to have found out that which none of his predecessors could possibly discover. Indeed, it is manifest, if the Attorney-General triumphs in this case, no great grievance can be redressed. When authority and power are interested, it requires a more cogent argument than justice to obtain relief, and it is only obtained by the power of public demonstration, and the accumulated weight of public opinion. A French author says — I do not quote him as an authority, for no man hates French infidelity and French republican opinions more than I do; but a French author says, that 'You cannot make a revolution with rose water.' He would make it with blood — I would make it with public opinion, and I would put a little Irish spirit into it! But I come to the *ménagerie* of evidence which sustains this case."

With a pardonable egotism, O'Connell referred to his past life, in proof of his sincerity and abhorrence of all illegal combinations: — "No, you cannot for a moment question the honest sincerity with which I have ever advocated that glorious principle, the advocating of which was the pride of my youth, the glory of my manhood, and the comfort of my declining years. It is utterly impossible for you to believe, that after having been so successful in my endeavour to obtain popular rights by means purely consistent with justice, humanity, the law, and the constitution, I could now fling to the winds every principle of my by-gone life, and assume the character and play the part of a conspirator. It has been frequently alleged against me by my enemies, that I am a man who would sacrifice principle to popularity. How stands the fact? I came forward, I opposed the combinations publicly, single-handed, and opposed them at the peril, not only of my popularity, but of my very existence. The fact is notorious in Dublin. At the meeting in the Exchange, the operatives were infuriated against me, and I owed the preservation of my life to the police. But it was my duty

oppose the combination, and I did not shrink from it. It was my duty to do it — I did not shrink from it — I persevered in it; and what occurred? I persuaded those who had been most ferocious against me, and from that day to this not a single combination outrage has occurred in Dublin. I opposed combination at the expense of popularity at the risk of life; and is it credible, I ask you, that I should have taken that part to play the hypocrite somewhere else? There is another matter in my life — my opposition to the Chartists. Recollect, Gentlemen, that when the Repeal Association was in full force the Chartists were in insurrection in England — that they were entering in hundreds and thousands into the manufacturing towns in England — recollect, Gentlemen, that there is something fascinating to all the poorer classes in Chartism. Oh, if I was playing the hypocrite, would I not have been mitigated in my tone respecting them? I did denounce them. I kept the Irish in England from joining them. The very moment a Chartist subscribed to the funds of the Association, his money was handed back to him, and his name struck off our list."

Having so far defended himself with great power, O'Connell turned aside to the futile task of converting his jury to repeal doctrines, and plunged into a chaotic heap of tabular returns and statistics, in which there is no rest for the sole of the foot, and where we shall not venture to follow: — "I say there is not a man in this court, the neutrality of the court alone excepted, that ought not to be a repealer; and I think before I sit down I will make you all repealers! [*Loud laughter.*] My defence is, that I am not looking for what is injurious to the country, but for what would be of the greatest possible benefit to this country. I have a right to this: for I have represented the county of Clare, with 250,000 inhabitants; I have represented Waterford, with 300,000 inhabitants; I have represented Kerry, with 260,000 inhabitants; I have represented Meath, with 300,000 inhabitants; and I now stand here the proud representative of the county of Cork, with her 730,000 inhabitants; and I feel it a duty I owe to the country to state that I am seeking what will benefit her inhabitants. I twice represented the

city of Dublin, and I feel gratitude to the Irish people for the confidence reposed in me, and I here stand up to demand for her her just rights and privileges."

O'Connell closed his address, in which he had not risen, before a cold and adverse audience, to the level of his high reputation, with a rapturous eulogy on Ireland, and a glowing prophecy of her redemption from bondage: — "No country possesses such advantages for commerce; the machinery of the world might be turned by the water-power of Ireland. Take the map, and dissect it, and you will find that a good harbour is not more remote from any spot in Ireland than thirty miles. Why is not the country prosperous? Did I not read for you of the unheard-of magical prosperity that followed her legislative independence? What happened once will surely happen again. Oh, Gentlemen, I struggle to rescue the poor from poverty, and to give wages and employment to those now idle; to keep our gentry at home by an absentee tax, after the example of the government last year, if by no other means, and compel them to do their duty to their country. I leave the case to you: I deny that there is any thing in it to stain me with conspiracy; I reject with contempt the appellation. I have acted in the open day, in the presence of the government, in the presence of the magistrates; nothing was secret, private, or concealed; there was nothing but what was exposed to the universal world. I have struggled for the restoration of the parliament to my native country. Others have succeeded in their endeavours, and some have failed, but, succeed or fail, it is a glorious struggle. It is a struggle to make the first land on earth possess that bounty and benefit which God and nature intended."

The evidence called for the defence appears to have been remarkable for nothing but its jejune and inefficient character.

Mr. Conway, editor of the *Dublin Evening Post*, recollected the meeting at the Royal Exchange in 1810, when the sheriff was in the chair, and O'Connell spoke; and Sir Colman O'Loghlen read a numerously signed requisition of the same date for the repeal of the union.

James Perry, a member of the Society of Friends, produced the rules of the society in reference to the question of arbitration.

The Attorney-General objected to this evidence being received as illegal, and unfounded on every legal principle.

Mr. M'Donogh contended that it was competent to them, being necessary for their defence, to show that similar rules had been entered into by a large and most respectable community of persons, and had been acted on by them for a series of years without even the imputation of a criminal intention.

The Chief Justice thought it perfectly fair that the Traversers should be permitted to submit to the consideration of the Court this proposition, whether there is not a vast number of highly respectable men in the community who, without any criminality having ever been alleged against them, have adopted a plan exactly similar, as the Traversers aver, to that for the adoption of which they (the Traversers) are now put upon their trial. They no doubt allege that their intentions in adopting the arbitration system are equally pure as the intention of the Society of Friends.

Mr. Justice Crampton said he "was sorry to be obliged to differ from the Lord Chief Justice, and he believed from the rest of the court also. It was very true that a question of intention might be involved in the present case, and the object of the Traversers in bringing the present witness on the table might be to show that the intention imputed to them by the indictment was erroneously imputed; but I am rather inclined to think that the intentions of a party in doing particular acts is to be decided from his own acts and his own declarations, and not from the actions and declarations of other persons."

Copious extracts were then read from the loyal portions of O'Connell's orations.

A witness Morgan, a coachmaker, residing at Tullamore, spoke to taking down an arch across the street, with the flaming motto, "Ireland—her Parliament, or the World in a Blaze," written on it, at the request of Mr. Steele, O'Connell having expressed to him his disapprobation of its being

erected. "It was taken down about a quarter past eleven, after second prayers."

Sir Colman O'Loghlen then put in the resolutions and petitions agreed to at the Mullingar, Longford, and Drogheda meetings, and they were entered as read.

Mr. Charles Vernon having again ascended the table, read from the *Freeman's Journal* of the 27th October, 1841, a report of a meeting of the Association, in which Mr. O'Connell reprobated the conduct of the Canadians in resorting to arms, and advised the people always to maintain the laws inviolate.

The Rev. Mr. Power being too indisposed to attend, the Traversers closed their case with these readings; and the Solicitor-General, with a weapon of excellent temper, addressed himself to the formidable task of cutting down the sophistries that had been interlaced with the defence.

An admirable lawyer, he took up single-handed the arguments of his eight antagonists, and, so far as the legal effect of oratory was concerned, disarmed them all. "In one respect," he said, "there is a marvellous coincidence amongst them, and that is, Gentlemen, the total absence of any the slightest comment upon — nay, I may say any the least reference to — the evidence in the case. Not a single observation has been addressed to the real merits of this question. Of Mr. Sheil's speech, '*materiam superabat opus*;' the execution was elaborate, but the matter very meagre indeed. In short, Gentlemen, he threw the case of the client overboard; and so indeed the client himself appeared to consider, for you recollect he disclaimed in a great measure the defence which his counsel had set up for him. The first of his topics was a sort of attack upon the Crown or the prosecutors, for the length of time which has been suffered to elapse before the prosecution was instituted against Mr. O'Connell and his colleagues: that struck me as a most singular species of defence, because it involves, as you will at once see, something like an admission of the guilt of these parties. My friend was compared to the *Delator* of the Roman Empire; but, were this true, as I shall prove it false, does it affect the guilt or innocence of these parties? If they have not violated the law,

they must be acquitted. If they have violated the law, what kind of defence is it to say that the government have forborne to prosecute them for a certain time? The conspiracy charged did not necessarily imply secrecy. In a popular sense it may, for it very seldom happens that persons who are engaged in an illegal design, enter into that design or agreement publicly: a conspiracy may, so far as relates to the acts that evidence it, be as public as any other offence which is the subject of prosecution in our law. The test is, not the secrecy, but the object of the combination. Gentlemen, we say that the Traversers have concurred in a common and unlawful design, the attempt to procure, by means of intimidation, a repeal of the legislative union, which, according to the laws of this country, cannot be legitimately repealed but by an act of parliament, the result of the free will of the legislature. No matter what the object is which parties have in contemplation, if they seek to bring about that object by improper and unlawful means, they are guilty of a conspiracy. Any single meeting regarded by itself no one would say was illegal because it was peaceable; but it being contended, that because the meetings are peaceable there is no conspiracy, we answer, there was no breach of the peace, and why? Because the conspiracy was that there should be none. They might have spared themselves the days they have exhausted in reading Mr. O'Connell's exhortations not to commit a crime; they might have spared themselves all the observations about no person being alarmed as to his personal security; they might have spared themselves all this, because we do not say that any one of these meetings, so far as that is concerned, would have been open to prosecution. Now let us just apply that to the argument, that this case was not prosecuted early (we will say) in the last year. Suppose we had selected a meeting in the month of March, and prosecuted the persons who attended at that meeting for being present at an unlawful assembly; what would have been the defence, and the triumphant defence? That that meeting terminated peaceably; that though numerously attended, it did not, at the time, cause any alarm to the public; that the parties assembled met for the ostensible

purpose of exercising the legal right of petitioning the legislature for a repeal of the act of parliament. Such a defence it would have been impossible for us to meet. Those meetings were held for the unlawful purpose of exhibiting to the legislature, and to the people of England, a demonstration of the physical force of this country, which it was expected would alarm and intimidate them into a concession of the measure of repealing the union. Gentlemen, I do not know where my learned friends found the facts which, as they conceived, authorised them to charge Her Majesty's government, or my high-minded and able colleague, the Attorney-General, with conniving at this which now appears to be an infraction of the law. Is it in the speech of Sir Robert Peel in the House of Commons, delivered so long ago as the 9th of May last? Is it in the speech from the throne? Is it in the dismissal of the magistrates for attending the repeal meetings? Are these marks of the approbation and sanction by the government of this country, of the prosecution of this insane and mischievous agitation? Are these the facts on which the gentlemen on the other side presume to say that we have countenanced this violation of the law, or seduced their clients into the commission of crime? Gentlemen, warnings of the most solemn nature, repeated warnings, were given; there never were offenders upon the face of the earth that had less reason to complain of being seduced into guilt, than Mr. O'Connell and his associates.

"In order to enable the government effectually to vindicate the law, it was necessary, not only that we ourselves should understand what this conspiracy was, but that we should be prepared with evidence to coerce any jury to act upon it. Do you suppose that the evidence of those facts, which we have been able to prove upon this trial, has been, or could have been procured without very anxious care and a great deal of time and trouble. Necessarily, Gentlemen, much of both was requisite. We felt that we ought not to prosecute the inferior and subordinate instruments by whom and through whose intervention the purposes of that combination were sought to be effected, but that we ought at once to bring forward the heads of it to trial; feeling that

to be our duty — the bold, straight, manly course to be pursued — we saw that that could not be done except through the medium of an indictment for conspiracy. They could not include counts for an unlawful assembly, as they must be defeated on technical grounds, unless all the defendants were present, and the attendance at one meeting only; because it is a principle of the criminal law, that in an indictment the trial must take place in the county where the offence is committed.

"Mr. Sheil talked rashly of the jury being packed: it is a most monstrous perversion of justice to apply an observation of that sort or character to a jury not returned by the sheriff, not arrayed by him, but selected by ballot out of seven hundred and seventeen names. The Crown solicitor was bound to strike off twelve. Mr. Kemmis made an affidavit, in which he stated that he had received information, which at the time he believed, and which he still believes to be true, that these gentlemen were members of the Repeal Association. Gentlemen, upon that occasion the answer was that the truth was not so; and it was distinctly stated that the fact would be negatived by affidavit. From that hour to this moment no such affidavit has been made. I ask you, Gentlemen of the Jury, as men of common sense, would it have been right or consistent with the duty of the law officers of the Crown, to have allowed members of this very Association, the legality of whose acts you are now impanelled to try, to sit in judgment upon their own acts, or upon the acts of that body to which they belong.

"The reference to the Repeal meeting in 1810 was perfectly irrelevant: where is the use of bringing forward the proceedings of 1810, or any antecedent period, to bear upon a case to which they have no reference whatever, the facts being altogether different? the facts being in one case that there was no more than a single meeting called for the purpose of petitioning parliament; and being in the other a succession of multitudinous meetings for the purpose of intimidating the legislature into a dissolution of the Union. I need scarcely take up any time in discussing Mr. O'Connell's conduct to Sir Abraham Bradley King. It certainly

was, I am willing to admit, very liberal and generous; but to suppose that an act of kindness to Sir A. B. King can be offered to your consideration as a justification of the conduct with which we charge him in this indictment, is quite preposterous, and I need not trouble you with making any further observations upon it.

"Mr. Moore has arraigned the policy of this prosecution. 'Do the government,' said he, 'suppose that the result of this trial, one way or the other, will tend to allay the agitation that pervades the public mind upon this subject?' Whether it will or not, it is not for me to say; nor, Gentlemen, is it for you to consider. When he charges my friend with lying by, Mr. Moore ought to have known the gravamen of the charge; and that such a charge could only be proved by a succession of acts. He ought not, therefore, to have said that the delay in bringing forward the prosecution was imputable to such motives as he thought fit to ascribe to us, when it was necessarily occasioned by the nature of the prosecution itself. Then he says, 'You charge us with a conspiracy. Where was the conspiracy? When was the conspiracy? Give us date — give us time.' Why, all we are called on to prove are acts of the parties, from which it is to be inferred that a conspiracy was in fact formed; and, therefore, to say that a conspiracy is not proved because we have not shown to a jury in what street it took place, or on what day it was arranged, is monstrous. I say it took place and existed in 1843. Mr. Ray's case, as stated by Mr. Hatchell, is this: — 'Mr. Ray is the paid officer of this Association; he has only done his duty.' Can it make any difference, with respect to the legality or the illegality of a man's conduct, that he acts as the paid agent or officer of an association? If the acts of that association be unlawful, Mr. Ray makes himself responsible, as every other member does, for the acts of that body to which he has united himself. Mr. Hatchell then says, 'Why did you not call some person who was a member of this Association to prove the existence of this conspiracy? Would not the case have been branded as one got up by treachery? Would it not have been said that this person received money for betraying his associates?

Gentlemen, you cannot have failed to remark, in the whole course of the evidence we have not produced any person open to the imputation of being a spy or informer. It is said Mr. Ray might have been produced as a witness. What do you think would have been his answer to the very first question put to him? He would have appealed to the Court, and he would have asked their lordships whether he was bound to criminate himself, or answer any question tending to criminate himself. It would have been an irresistible objection; he could not have been compelled to answer one question. The proceedings of this Association are all recorded, and there are books. Where are the books? Might they not have been produced? There was not a single person connected with this Association placed upon the table — not a single document emanating from it was produced, except some of a public nature — not one of their books — none of their officers — not a single ray of light thrown on this case on their part.

"Mr. Fitzgibbon charges us with striking a blow below the belt. Surely it was as fairly-aimed a blow as ever was struck; and not only has the attack been fair, but we have given the defendants the fullest scope for their vindication. We are seeking to visit one man with the act of another, but not with the guilt of another. We are seeking to charge each man with his own guilt. He says it is not illegal to combine for the common object of obtaining the repeal of the union. Certainly not; but it is illegal to combine to obtain a repeal of the union by sowing dissension amongst different classes of the subjects, by intimidating the legislature, by causing disaffection in the army. Mr. Fitzgibbon says, that Mr. O'Connell has always shown his aversion to Chartism and Ribondism. I admit he has; and for the best of all reasons, that Chartism, or Ribondism, or any other kind of society or machinery, save and except that which he himself was organising and intending to use, would have been fatal to his projects."

The Solicitor-General admitted that Mr. Whiteside's topics were fair matter of argument, but that the ingenious sorites of Mr. Henn were merely splendid sophisms. "'I admit,'

said my learned friend, 'in the fullest sense, that the act of one conspirator or party is evidence against others, if they are embarked in the prosecution of one common unlawful purpose; but when parties are engaged in a legal object, where their object is perfectly fair, and constitutional, and proper, then I say that it is most monstrous, and unjust, and unfair to visit upon Mr. Duffy, for instance, the acts of Mr. O'Connell, or upon Mr. Ray the act of Mr. Steele, and so on.' Why, Gentlemen, all this is very plausible, but unfortunately it involves the assumption of the very question in issue, it begs the very question which you are called upon to decide. I do not admit that the common object of these parties was simply what Mr. Henn says it was." Having thus cleared the way, in point of law and of general observation, to a discussion of the merits of the case, the Solicitor-General proceeded to the history and detail of the proofs on which he relied for a conviction, and recapitulated with great clearness, in a tone of plain, sound, solid sense, the vast body of evidence that proved the real nature and true objects of the conspirators.

He paused, when reviewing the article "Our Nationality," to animadvert on Mr. Whiteside's adroit manœuvre.

"'Twenty thousand Tipperary men, who would as soon, if called on, pay their blood as their subscriptions, would not form a bad national guard for Ireland.' Gentlemen of the Jury, the damning effect of that document was felt by Mr. Whiteside, upon whose client it particularly bore; and what was the course adopted by him when that document was read? He called for the production of another article in the paper, which I expected would have some sort of reference to this, and have been a qualification of it in some way. But what was it? A love song! You recollect the shouts of laughter which Mr. Whiteside elicited by this happy expedient. But, Gentlemen of the Jury, I was certainly struck with very different feelings when I saw an attempt thus made to get rid of the effect of this piece of evidence. You all remember the dramatic effect produced by him in commenting on this part of Mr. Barrett's speech. He dwelt on the word 'cow,' but he forgot the words

'crouch of the tiger,' and he did not say much on 'the sure but terrible spring.'"

The Solicitor-General dwelt with force on the suggestion of firing Lord Beaumont's castle and the metropolis, which had been passed over in discreet silence. "Mr. O'Connell may preach, as long as he pleases, the doctrine of obedience to the law; he may profess to inculcate on his hearers sentiments of charity, and mutual good-will, but he never can neutralise that speech, he never can qualify or explain it, he never can say that it had any other meaning than that which it must necessarily bear, in the understanding of every body who reads it, that a time might arrive, when the people of this country would fire the manufactories in England, and even the city of London itself. We charge these parties, Mr. O'Connell and his associates on trial, with attempting to intimidate the people of England. We charge them also with inciting the people of Ireland against their English neighbours. Have I not proof of both in that very speech? Observe that no comment whatever has been made by the defendants' counsel on this passage; it was passed over as a mere personal attack on Lord Beaumont."

Having occasion to quote a passage from one of Mr. Steele's unguarded speeches, the Solicitor remarked with much good feeling: "Mr. Steele is a gentleman whose courage and manliness I respect. He has never disguised his sentiments, and he has on this occasion put them forward boldly and frankly. I have known Mr. Steele many years, and it is what I should expect from his high character."

The melancholy fate of this misguided victim to O'Connell, himself honest and unselfish, renders these remarks the more gratifying, as they did credit both to the speaker and the subject.

The notion of assimilating the enforced Arbitration Courts to the voluntary references of the Ouzel Gallery, where the parties made their own selection, was justly denounced as ludicrous. "Here it is announced that the reason of appointing arbitrators is the dismissal of the magistrates. And observe, the arbitrators, that is, the judges of the new judicial system, are to be persons appointed not by the

parties but by this Association. But when people refer their differences to arbitration in the ordinary way, they choose their own judges."

The power of the sword was not lost sight of. After reading Mr. Power's letter on the duty of a soldier, the Solicitor-General asked why the thing was written at all? "It has not been explained why it was published, or why the Rev. Mr. Power of Kilrossenty thought it his duty to instruct Her Majesty's army in the discharge of their duties, in what case they were bound to obey, and in what case they were bound to disobey. The real reason for interference is to introduce into the ranks a spirit of — I will call it no more than — reluctance to interfere and do their duty, should any emergency arise to render it necessary to call on them to discharge their duty to their officers."

The principle of the prosecution was again pithily enuntiated by the Solicitor-General, who thus forcibly concluded. "We do not visit one man with the guilt of another, but we visit on him the legal and inevitable consequences of his own act, and fasten upon him the responsibility consequent upon his own guilt. I call upon you for your verdict; not, Gentlemen, because this country is in a state of disturbance, not because that verdict may tend one way or other to act upon the state of the country, not because it may be attended with this or that consequence either to the public or to individuals, not because it may be productive of this or that effect with regard to legislative enactment; no, but that verdict I call upon you to give which the law, the justice, the uncontradicted and unexplained evidence in this case demand."

The Chief Justice (Pennefather) enforced the law as laid down by the Solicitor-General, feeling there was no great difficulty in it, and enlarged on the real facts the jury had to determine, after dismissing all irrelevant matter. A slight tone of satirical humour tinged some of his remarks: — "Gentlemen, you have heard during this long trial a great deal of eloquence — brilliant eloquence; you have heard somewhat also of declamation; you have heard great oratorical powers, and powers of reasoning; you have heard a great deal of what may be deemed poetic; and I do not

mean to say but that you have also heard a great deal of what might be justly termed prosaic; you have heard observations made to you, which, I cannot help saying generally, bordered upon the very verge of propriety."

The Chief Justice quizzed the teetotallers of the monster meetings by likening them to the armies of Xerxes, who drank up rivers in their march, and cited pleasantly the passage from Juvenal, "*Epotaque flumina Medo prandente.*" He called the Repeal Association a Society for the Diffusion of Useful Knowledge, and smiled at the Rev. Mr. Tierney holding a pet meeting of his own at Clontibret. But that which gave most umbrage, and occasioned virulent invective, but which a gesture, a nod of the head, or motion with the hand, might at once explain, was his speaking of the counsel for the Traversers as *the gentlemen of the other side:*—"I am stating substantially the document to you, and I am speaking under the correction perfectly of the gentlemen of the other side to see whether I do not state correctly the several documents, as I go along."

Had the charge of the Chief Justice been less forcible, this inadvertent phrase, easily to be reconciled with the most perfect fairness of intention, would not have been fastened on so greedily; but he felt convinced, and therefore manfully expressed his conviction, that the averments in the indictment sufficiently designated grave offences known to the law, and that the evidence had fully established those averments. He concluded his very long and effective charge with expressing to the jury a confident hope that the Lord who ruled over all would enlighten and direct them!

Never was a pious wish apparently more thrown away. From over-anxiety to be scrupulously correct, they took great pains to get inextricably wrong, and at length so subdivided and multiplied the issues contained in the first five counts as to make their findings of none effect. The issues were handed to them at half-past five on the Saturday afternoon, and at nine they returned into court with a verdict, on the third count, of Guilty against Dan. O'Connell, Richard Barrett, and Ch. Gavan Duffy, saying nothing with respect to the rest. The Foreman declared they had passed over

the first count as too comprehensive. The seven defendants included in the fourth count were all found Guilty. On the fifth count, also, the whole body of defendants were found Guilty. Had a verdict of Not Guilty been entered on the other counts, and on the fourth with respect to the Rev. Mr. Tierney, all that exercise of forensic ingenuity, which perplexed the judges and divided the law lords, would have been stayed.

"Sed Dis aliter visum."

The jury being directed to find on each count, could not agree upon the exact terms in which their verdict should be framed, and remained in dire perplexity until the clock struck twelve. They were not the only puzzled parties. At midnight there occurred the following curious dialogue between Mr. Justice Crampton, who had remained to receive the verdict, and the Counsel:—

Court. I want to know whether you contend that the verdict is not receivable now?

Attorney-General. Under the circumstances, I think the jury should not be allowed to separate at this hour.

Court. That is a different question: I want to know whether you mean to say that the verdict is receivable?

Attorney-General. I don't go that length, nor do I think it necessary; but in a case of this magnitude and importance, I cannot agree to have the jury discharged now.

Court. I only want to have it done according to law: certainly great inconvenience may arise from keeping the jury shut up during the night, and all to-morrow, and the whole of to-morrow night; and if there is not an absolute necessity for it, it should not be resorted to. What do you say, Mr. Moore?

Mr. Moore. I say nothing, my lord.

Court. Very well, you don't commit yourself much by that [*laughter*]. What do you say, Mr. Henn?

Mr. Henn. My lord, we don't consent to any arrangement; we have nothing to say to it.

Court. I see that I can't get any information or assistance from either side.

Attorney-General. It happens to be a singular case, and

a question might be raised as to whether your lordship may have jurisdiction to do any act at this hour. Under those circumstances I don't think I would be justified if I did not state that I am of opinion the Court ought to adjourn until Monday morning.

Court. I shall certainly not discharge the jury against the will of the counsel for the Crown and the Traversers.

Mr. Moore. We are not expressing any opinion whatever on the subject, my lord.

The jury were locked up till Monday morning, when they finally returned a verdict, on more issues than had been submitted to them, most elaborately wrong.

There were in effect six distinct charges comprised in the indictment: —

1. A conspiracy to raise and create discontent and disaffection amongst Her Majesty's subjects, and to excite them to hatred and contempt of, and to unlawful and seditious opposition to, the government and constitution as by law established.

2. A conspiracy to stir up jealousies, hatred, and ill-will between different classes of Her Majesty's subjects, and to promote amongst Her Majesty's subjects in Ireland feelings of hostility and ill-will towards Her Majesty's subjects in the other parts of the United Kingdom, especially in England.

3. A conspiracy to excite discontent and disaffection in the army.

4. A conspiracy to assemble meetings of large numbers of persons in Ireland, and, by means of the intimidation to be thereby caused, and the exhibition and demonstration of physical force thereat, to obtain changes and alterations in the government, laws, and constitution, and especially to effect a dissolution of the legislative union between Great Britain and Ireland.

5. A conspiracy to bring into hatred and disrepute the courts by law established for the administration of justice in Ireland, and to diminish the confidence of Her Majesty's subjects in Ireland in the administration of the laws therein, with intent to induce the said subjects to withdraw the adjudication of their differences with and claims upon each

other from the cognizance of said courts, and to submit them to the decision of other tribunals to be constituted and contrived for that purpose.

6. A conspiracy to assemble meetings of large numbers of persons in Ireland, and, by means of seditious and inflammatory speeches to be made thereat, and also by means of the publication of seditious writings and compositions amongst Her Majesty's subjects, to intimidate the Lords Spiritual and Temporal, and Commons of Parliament, and thereby to bring about changes and alterations in the laws and constitution.

(This charge was set forth in the eleventh count only.)

The first five counts were unexceptionably, the sixth and seventh defectively, framed. They charged an agreement to cause divers subjects to meet together in large numbers for the purpose of obtaining, by means of the intimidation thereby caused, changes in the government, laws, and constitution. By a curious combination of blunders, the jury found the defendants guilty of separate and distinct conspiracies under the same counts. As each count charged one unlawful agreement, and no more than one, it was not competent for the jury to find, as they did, some of the conspirators guilty of a conspiracy to effect one or more of the objects stated, and others guilty of a conspiracy to effect others of the objects stated; for that was, in truth, finding several conspiracies on a count which charged only one. When the jury proved right, the criminal pleader was wrong. Intimidation not being a technical word, "*vocabulum artis*," which must be taken in a bad sense necessarily, there ought to appear from the context, in order to give it any force, what species of fear was intended, or upon whom such fear was designed to operate.

In these opinions all the judges concurred, after hearing the minute criticism and subtle arguments of Sir T. Wilde, Mr. Kelly, and Mr. Peacock on behalf of the Traversers, and of the Attorney-General, Sir W. Follett, and the Attorney-General for Ireland for the Crown. There remained five good counts in law, and upon which the findings of the jury could not be impugned. But then the judgment was

general, "that the party for his offences aforesaid shall be fined and imprisoned." What were the offences aforesaid? The majority of the judges, upon the questions being submitted to them, C. J. Tindal, J. Patteson, J. Maule, J. Williams, B. Gurney, and B. Alderson (J. Coleridge also expressed his assent), held that these were the offences properly charged and properly found in the record. Offences aforesaid must, according to every rule of legal interpretation, relate only to those counts in which some legal offence was stated. Mr. J. Coltman and B. Parke, on the contrary, were of opinion that they must adhere to the statement on the record, which declared that the Court below passed sentence on the defendants for the offences aforesaid; those, namely, charged in each and every of the counts. The majority of the law lords adopted this opinion, and determined, contrary to a long-entertained but erroneous impression, that a general judgment for the Crown on an indictment containing several counts, some good, others bad, where the punishment was not fixed by law, could not be supported. In a high-minded judgment that will never be forgotten, Lord Denman declared, as a further ground of reversal, that the causes of challenge to the array were sufficient, and would not conform to the narrow technical grounds of unindifferency in the sheriff, on which all the judges agreed to dismiss it. By this lucky combination of an indictment partly bad, a verdict partly bad, and a judgment partly bad, the Traversers escaped. After moving vainly the Court of Queen's Bench in Ireland for a new trial, and in arrest of judgment, they had been brought up on May 30, and sentenced to pay a fine of 2000*l.*, to be imprisoned twelve calendar months, and to find sureties to keep the peace for seven years. From this period till the 7th September, more than three months, they suffered imprisonment; and, by this harsh infliction, but which, in the then state of the law, could not have been avoided, caused to be effected a salutary change. An act was immediately passed, 8 & 9 Vict. c. 68, "to stay execution of judgment for misdemeanours upon the parties giving bail in error." It was a just remedial measure for an admitted wrong.

INDEX.

Abinger, Lord, remarks of, 101.
Act for the Security of the Queen's Person, advantages of, 5 & 6 Vict. c. 51., p. 105.
Adjourning trials, former and modern practice, ii. 110.
Adolphus, John, speech of, v. Courvoisier, 245.
Affidavit, Lord Cochrane's, ii. 90—96.
Alderson, Baron, on Bowler's case, 362.
Alexander, Alexander, trial of, for forgery, 403.
Alibi, defence of, in Scottish Courts, ii. 181—190.
Alison's Principles of Criminal Law, 167.
Alison's remarks on Lord Cochrane, ii. 109; on the combinations, 158—160; evidence of, 153—173.
Applause in Court at Brougham's speech, ii. 260; Whiteside's, 512.
Armageddon and Ashdod, ii. 278, 279.
Arnold, trial of, for shooting at Lord Onslow, 332.
Arrest of judgment, Brougham's motion for, ii. 270—272.
Attornies, Irish, and Mr. Brewster, ii. 412.
Austin, Mr., criminal information by, against B. D'Israeli, 257.

Bailey, Rev. Dr. Wm., trial of, for forgery, 404, 405.
Bar, trial at, of Mayor of Bristol, ii. 272.
Bar, rights and privileges of, in defending prisoners, 253.
Barbarity of the judgment in high treason, 98.
Beckwith, Major, evidence of, ii. 307.
Bellingham, trial of, 315—318. 363.
Best, Serjeant, speech of, for Lord Cochrane, ii. 46.
Blackburne, C. J. of Ireland, charge of in O'Brien's case, 526; sentence by on O'Brien, 530, 531.
Blasphemy, just grounds for punishing, ii. 362, 363. 390, 391.
Boswell, Sir Alexander, squibs by, 183—185.
Bowler, trial of, 333. 361.
Brereton, Colonel, conduct of, ii. 277; suicide of, 278.
Bristol, riots at, account of, ii. 273—279.
Brookes, trial of, at Chester, ii. 220.
Brougham, Lord, on the Scottish Law of Marriage, ii. 118, 119; on the trial of the cotton-spinners, 161; eloquence of, 235; speech at Durham, 252; on the duties of counsel, 258; on the law of insanity, 321; on O'Brien's petition, 532.
Buller, J., charge of, on trial of Rev. Mr. Allen, 162.
Burnett's Scottish Law on Duelling, 205.
Butt, trial of, ii. 1.

Campbell, Major, duel of, 152.
Campbell, Sir John A.-G., speech of, against Frost, 6—9; speech of, against Oxford, 110—113; remarks on Lord Cardigan's case noticed in the House of Lords, 210, 211; speech of, at the bar of the Lords, 214—218; address to the Lords, 233; defence of his remarks on duelling, 242, 243.
Cardigan, Earl of, trial for shooting at Captain Tuckett, 209.
Challenges, peremptory, discussed, 4, 5.
Challenge to the array, ii. 431.
Chonne, Dr., evidence of, 138—141.
Christie, Robert, evidence of, 183.
Church of England, Lord Brougham on, ii. 255.

Clarke, James, Dr., evidence of, on insanity, 141—143.
Clergy, Durham, ii. 231.
Cochrane, Lord, history and anecdotes of, ii. 1—10; trial of, 10—111.
Cockburn's, A., defence of M'Naughton, 350.
Cockburn, Henry, speech of, for Mr. Sturt, 171—179.
Cockburn's, Henry, defence of Burke, 312; note of Lord Cockburn in Lord Stirling's case, ii. 416; judgment of, ii. 200.
Codrington, Captain, evidence of, ii. 304, 305.
Conolly, Dr. J., evidence of, 136—138.
Conspiracy, definition of, by Sheil, ii. 494.
Conspiracy of O'Connell reviewed, ii. 394—399.
Counsel, rights and privileges of, 247—264.
Courvoisier, trial of, 244.
Criminal Law Commissioners, remarks of, 150; ii. 391.
Criminals, on the public execution of, 264.
Cross, Serjeant, speech of, ii. 114, 115; reply of, 151.
Cross-examination, by Serjeant Ludlow, 49, 50; by Sir Frederick Pollock, 131; by Serjeant Wrangham, 225; by Charles Phillips, 282—287.
Cross-examination of a Quaker by Sir James Scarlett, ii. 292—294.
Cross-examination by Mr. Robertson, ii. 184; of an Irish reporter by Mr. Hatchell, 464; of Dobbyn by Whiteside, 484; of Mr. Trant, 497; of Mr. Ross by Mr. Henn, 466; of Constable Jolly by Mr. Whiteside, 471; of Maguire by Mr. Hatchell, 474.
Cross-examination by Mr. Cockburn, 343; by Serjeant Best, ii. 40; by Mr. Gurney, 74, 75; by Mr. Scarlett, 188.
Cross-examining prisoners, ii. 229.

D'Aguilar, Ch., general evidence of, 441.
Dalbiac, Sir Charles, speech of, ii. 278, 279.
Dalton, Henry, evidence of, 528.
Death, punishment of, 266, 267.
Declarations of pannels to prove guilt, ii. 190.
Delisle, forged map of, 425.
Denman, speech of, in Attorney-General v. Mayor of Bristol, ii. 283—288; reply of, 338—346.
Denman, Lord, summing-up of, in Oxford's trial, 147; as Lord High Steward, 238—241.
Denman, Lord, summing up Moxon's trial, 388, 389; remarkable history of, 152—165.
Discussion, free, panegyric on, by Mr. Whiteside, ii. 518.
Dobbyn, James, evidence of, 481.
Dublin described by Mr. Sheil, ii. 487.
Duelling, Quarterly Review on, 243.
Duty of magistrates in cases of riots, ii. 348—354.
Duty of soldiers at such a season, ii. 350—353.

Edward III., statute 25. of, 2.
Ellenborough, Lord, on Lord Cochrane's trial, ii. 33; summing-up of, 86—94.
Eloquence, forensic, ancient and modern compared, 231—233; of the Bar, discussed, 356—362.
Esquirol on Moral Insanity, 107.
Essays, 102.
Evidence, questions of, ii. 170. 179 180.

Ferrers, Earl, trial of, 331—359.
Fitzgerald, Mr., speech of, for O'Brien, 522—524.
Fitzgibbon, arguments of, ii. 433.
Fitzgibbon and Mr. Justice Crampton, ii. 476; challenge to from Attorney-General, 501; speech of, 500—502.
Follett, Sir William, defence of Lord Cardigan, 220; address to the Lords, 231; speech as Sol.-Gen. on the prosecution of M'Naughton, 326—339.
Frost, trial of, 1.

Graham, Sir James, attack on by Sheil, ii. 491.
Gray, Captain Basil, evidence of, 27—31.
Green, Solicitor-General for Ireland, reply of, ii. 537.
Gretna Green marriages, ii. 118.
Grimsditch, Mr., examination of, ii. 124—128.
Gordons, the trial of, for abduction, ii. 117.

Gurney, B., speech of, *v.* Lord Cochrane, ii. 10—*25.*; reply of, 79—*86.*

Hatchell, Sol.-Gen. for Ireland, reply of, *524*—*526.*
Hatchell, Mr., speech of, for Mr. Ray, ii. 499.
Henn, Mr., speech of, for Mr. Steele, ii. 520.
Hetherington, conviction of, ii. 363.
Hodgkin, evidence of, *185.*
Holmes, Mr., and Mr. Whiteside, ii. 477.
Hotham, Baron, charge of, *154*, *155.*
Hullock, B., on admitting the evidence of a wife *v.* husband, ii. 130—*151*; summing-up in Wakefield's trial, *153.*
Hume, Baron, Scottish Law of Duelling, *205.*
Hunter and four others, cotton-spinners, trial of, ii. *156.*
Hutchenson, Dr. William, evidence of, 398.

Indictment, delivery of copy of, with jury list, in trials of high treason, 10—*16.*
Innes, Solicitor-General for Scotland, speech of, 442—*445.*
Insanity, moral, dangerous doctrine of, 106—111.
Invective, examples of, ii. 262, 263.
Ireland and the Irish, praise of, by Mr. Whiteside, ii. *510*—*512.*
Irish and English state trials compared, 469—*472.*
Irony, example of, ii. *255.*

Jeffrey, defence of M'Dougal by, 312.
Judges, answers of, on the law of insanity, 323—*325.*
Judgment of death, on Frost, 96—98; on O'Brien, ii. *531*, *532.*
Jurors, excuse of, on O'Connell's trial, ii. 486.
Jury chosen by ballot, 4.

Kelly, Sir Fitzroy, speech of, in defence of Frost, *52*—71; arguments by, 12.
Kennett, Lord Mayor of London, criminal information against, ii. 282, 283.
Kenyon, Father, comments on, *516.*

Laing, David, the Gretna Green Blacksmith, examination of, *144*, *145.*
Law of the land on duelling, *151.*
Law points, 10; ii. 411.
Law, Scottish questions of, ii. 199.
Length of speeches, 96.
Length of O'Connell's trial, ii. 393.
Letter of Rev. J. Alexander, 423.
Letters of Le Marchant and Lord Cochrane, ii. 62; of Lord Cochrane to Lord Ellenborough, 104—108; of Edward Gibbon Wakefield, 128.
Littledale, J., summing-up the evidence on the trial of Mayor of Bristol, ii. *346*—*352.*
Lockhart, J. G., remarks of, on Sir A. Boswell's death, 207, 208.
Lords, House of, as court of appeal, ii. 403.
Louis XV., writings of, 438, 439.
Ludlow, Serjeant, and Colonel Brereton, ii. 299; as a witness, 327. 331—333.
Lyndhurst, Lord, on the law of insanity, 320.

M'Donnell (of Glengarry), trial of, 163.
M'Donogh, Mr., speech of, in defence of Barrett, ii. *524.*
Mackenzie, Sir George, on duels, 205.
Mackworth, Major, conduct and evidence of, ii. 320.
M'Lean, trial of, for murder, ii. *156*—230.
M'Namara, Captain, trial of, for manslaughter, *155.*
M'Naughton, Daniel, trial of, 314.
M'Neill, Duncan, on, the law of marriage in Scotland, ii. 147; speech of, 208—216.
Mancer, Sarah, examination of, *275*—282.
Maule, Justice, on the law of insanity, 323.
Meadowbank, Lord, charge of, *456.*
Monro, E. T., Dr., evidence of, 398.
Moat, James, evidence of, 164.
Moore, Mr., arguments of, against the Attorney-General, ii. 434.
Moore, Mr., speech of, for the Rev. Mr. Tierney, ii. 497.
Morrison, Sir Alexander, evidence of, 398.
Moxon, Mr., trial of, for publishing Shelley's works, ii. *356.*
Murdick, James, evidence of, 168.

Nation Newspaper, the poetry of, ii. 396—445.
Not Proven, Scottish verdict of, ii. 227.

O'Brien, Wm. Smith, trial of, 469—536; history of his attempted rebellion, 472—474; speeches of, 475—479; letter of Duffy to, 480; demeanour to the Court, 485; letter to the Mining Company, 494.
O'Connell, Daniel, trial of, for conspiracy, ii. 392—550; description of his speech, 401; speech in his own defence, 528—535; humours of, 530.
O'Connell, John, speech of, ii. 497.
O'Connor, General, notice of, 497.
O'Loghlen, Sir Colman, arguments of, ii. 420—423.
Oxford, Edward, trial of, for high treason, 102.
Oxford, Hannah, examination of, 126—129.

Park, Mr. J., and Lord Ellenborough, ii. 44—46; speech of, for De Berenger, ii. 52—60.
Parke, Baron, on the trial of Frost and Courvoisier, 258; of Mayor of Bristol, ii. 352, 353.
Pell's, Serjeant, defence of Sandom, ii. 60.
Perceval, murder of, by Bellingham, 315.
Perrin, J., judgments of, 435.
Phillips, Charles, pamphlet of, 245; explanation of his conduct as counsel, 247—253; defence of Courvoisier by, 245; speech of, 304—310; Recollections of Curran by, 313.
Phillips, Sir Thomas, evidence of, 24—27.
Pinney, Charles, trial of, ii. 272.
Piolaine, Charlotte, evidence of, 298. 301—303.
Pollock, Sir Frederick, speech of, in defence of Frost, 39—49.
Provost of Glasgow, criminal information against, ii. 281.
Public executions, necessity of, 264—267.

Queen, the attempts on the life of, 102; act for declaring her prerogative in Ireland in commuting sentence of high treason, 533.

Rae, Sir Wm., speech of, 187.
Ray, Dr., on insanity, 364—368.
Richardson's works, criticisms on, ii. 371.
Robertson, Lord, defence of Lord Stirling, 445—456; defence of the Glasgow cotton-spinners, ii. 216—226.
Rosslyn, Earl of, evidence of, 179—183.
Russell, Sir H. (Recorder of Bombay), charge of, 157.
Russell, Lord Wm., murder of, 244, 245.
Rutherford, Lord Advocate, speech of, ii. 216—226.

Scarlett, Mr., and Lord Ellenborough, 68; the fifteenth juryman, ii. 115; speech of Sir James in defence of the Wakefields, 137—142; motion against Ambrose Williams, 237; speech at Durham, 240—251, for Mayor of Bristol, 309—326; explanation with Attorney-General Denman, 352, 353.
Sheil, Richard Lalor, speech of, ii. 481.
Smith, Baron, charge of, 158—162.
Smith, T. B. Cusak, arguments of as Attorney-General for Ireland, ii. 405. 407. 409. 414, 415, 416. 420. 432; speech of against O'Connell, 437—462.
Smith, John, murder of, at Glasgow, ii. 157—159.
Sparling, Lieutenant, trial of, for murder, 156.
Starkie, Mr., arguments against relaxing the law against duelling, 168—170.
Stephens, Rev. Mr., speech of, ii. 230.
Stuart, James, memorial of, 207.
Swendsen, trial of, for abduction, ii. 116.

Talfourd, Serjeant, eloquence of, ii. 361—362; speech of, for Moxon, 365—388.
Talhourdin, Mr., evidence of, ii. 71, 72,
Taylor, Sydney, speech of, for Oxford. 121—125.
Tenterden, Lord, at the trial of the Mayor of Bristol, ii. 291. 301—304.
Tindal, C. J., charge to the grand jury in Frost's case, 1—3; summing-up, 94—96; sentence by, 96—98; summing-up Courvoisier's case, 310; sentence of, 311; case of M'Naughton, 401; at Bristol, ii. 279.
Trant, Thomas, evidence of, 495.
Treason, high, law of, 1—3.
Turner, Miss, account of her abduction, ii. 112—118; evidence of, 131.
Turner, William, Mr., evidence of, 119.

Verdict of the jury on Oxford's trial, 149, 150.

Wakefields' trial, ii. 112.
War, levying, what constitutes, 8.
Whately, Archbishop, on insane criminals, 321; on the English Law of Blasphemy, ii. 389.
Whiteside, eloquence of, 471; speech of, 501—520; on O'Connell's trial, ii. 400; speech for Mr. Duffy, 502—512; plaudits to, 512.
Wilde, Sir Thomas, reply of, in trial of Frost, 71—94; in Oxford's trial, 143—147.
Williams, Ambrose, trial of, for libel, ii. 231.
Witnesses, objections to, by the civil law, 430—432.
Witnesses, on back of indictment, right of prisoners to see the names of, ii. 408, 409; right to a copy of the list, 426—430.
Wood, Baron, charge of, ii. 267.

Yarmouth, Lord Warden of, ii. 72.
Young England, Rules of, 118, 119.

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